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Vol. II
TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 296.

**CHARLES D. NEWTON, AS ATTORNEY GENERAL OF THE
STATE OF NEW YORK, AND ALFRED M. BARRETT,
CONSTITUTING THE PUBLIC SERVICE COMMISSION
OF THE STATE OF NEW YORK FOR THE FIRST DIS-
TRICT, APPELLANTS,**

vs.

NEW YORK & QUEENS GAS COMPANY.

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK.**

FILED APRIL 11, 1921.

(28,225)

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VOLUME II.

1119

NEW YORK & QUEENS GAS COMPANY

vs.

CHARLES D. NEWTON, &C., et al.

Before Abraham S. Gilbert, Special Master.

New York, May 27, 1920.

Met pursuant to adjournment.

Present:

Mr. Ransom and Mr. Vilas, of Counsel for Complainant.

Mr. Chambers, Mr. Tobin and Mr. Cummings, of Counsel for Defendant Newton.

Mr. Neumann, of Counsel for Defendant Lewis Nixon, Public Service Commissioner.

Mr. Van Steenburgh, of Counsel for Defendant Dennis O'Leary.

ARTHUR W. TEELE resumed the stand.

Cross-examination continued.

By Mr. Neumann:

Q. Mr. Teele, Exhibit 65, Schedule 4, relates to the various taxes? The Master: Yes, it appears that it does.

Q. Take the item of Special Franchise Tax, \$7,382.54, that item as it appears on this schedule will not be found in the operating ledger or in the general ledger as of that particular amount which is indicated, but in some other amount—is that correct?

A. It is made up of different amounts appearing in the account.

1120 Q. In other words I want to develop the facts here. Neither the general ledger nor the operating ledger will show that figure of \$7,382.45 as a separate figure, distinct and by itself?

A. That is right.

Q. That is true also, is it, of the item of real estate, \$13,103.16?

A. Yes.

Q. And that is true also of the item of capital stock, \$1,298?

A. Yes, that is made up of two items.

Q. Now, that capital stock is made up by two items consisting of what?

Mr. Ransom: I think the record might well show that counsel for the Commission went over these matters with Mr. Teele last night, with his working papers.

Mr. Neumann: I think that is a very ungentlemanly thing for Mr. Ransom to say.

The Master: I do not think that it was ungentlemanly, it was not particularly necessary. The fact is that on adjournment last night I suggested to counsel that time would be saved in this way. Counsel adopted the Master's suggestion and is saving time in this way. That is all there is about it.

Mr. Ransom: For which I am very glad.

A. It is made up of two items of \$827 and \$471.

Q. Now, you are reading, Mr. Teele, from the——

A. I am reading it from the General Ledger 4, folio 176, account entitled, "Accrued Taxes," the two items appearing on the debit side of that account.

1121 Q. Now, likewise, page 176 contains these other amounts that I was speaking of, \$7,382.54, and \$13,103.16, in conjunction with other amounts?

A. It does.

Q. And not by themselves?

A. Not by themselves.

Q. And what I have illustrated as of the capital stock tax is typical of the other two?

A. It is typical of the other two, but it is not typical of the gross earnings tax, which does appear as an item in this account.

Q. As separate and distinct by itself.

A. Separate and distinct by itself.

Q. And that amount is \$1,749.10?

A. It is.

Q. That is correct, is it?

A. Yes, sir.

Q. Now, Mr. Teele, Exhibit 65, particularly referring to Schedules 1, 2 and 3, contains in the first column the words "Operating Expense, Ledger No. 2, Folio," and opposite each item is the corresponding page of the ledger that that item will be found on?

A. Yes.

Q. Is that correct?

A. Yes.

Q. And after each item—take, for instance, the first one on Schedule 3, "Transmission Pumping," there is in brackets a figure of 631. What does that figure refer to?

A. It refers to the Public Service Commission uniform system of accounts number which, in my opinion, corresponds with the account "Transmission Pumping" as carried on the books of this company.

1122 Q. In other words you have indicated by that figure the uniform system of accounts subdivision that covers this particular subject?

A. I have.

Q. Now, will you please state for the record why you did not do likewise with reference to the page of the ledger, and with reference to the Public Service Commission account that these taxes should

have appeared under that are specified by you in Exhibit 65, Schedule 4?

A. My recollection is that the Public Service Commission's uniform system of accounts does not give any number to taxes.

Q. Let me see now if it does. Have you the uniform system of accounts before you?

A. I have.

Mr. Ransom: Page 54.

The Witness: No, page 52.

Mr. Ransom: Pages 52 and 54.

Q. Page 52, G-853?

A. G-853 relates to duplicate gas charges, credit.

Q. And a subdivision under that, 17, expenses outside of operation?

A. No, I do not so interpret it.

Q. And then the next is 18, Tax Account?

A. The next is 18, Tax Account. I do not interpret that as being a subdivision of G-853.

Q. What do you interpret that as?

A. I interpret that as being a section of the whole instructions.

Mr. Ransom: That is not a subdivision of G-853.

Mr. Neumann: What do you characterize it as, Mr. Ransom?

1123 The Witness: However, I had no purpose or reason in not designating any corresponding account in making up this Schedule 4, I simply didn't do it.

The Master: I will get this right on the record. I have before me the uniform system of accounts. It is cut up into various sub-schedules. Schedule B starts off with paragraph No. 1, "Income and Indicant Accounts Compared." The next paragraph, paragraph 2, is entitled, "Division of Income Account," and it so goes on until we get to 12, which begins to refer to setting up various accounts, and starts with 431, Municipal Street Lighting, Gas. After going through with all these various accounts we then strike No. 13, which it is quite clear does not refer to setting up an account, because no account is set up there; 14 and 15 set up no account. 16-A sets up no account. 16-B begins to set up accounts again, or definitions under numbers, and that goes on for pages until we strike 17, and then 18, which quite clearly has nothing to do, in my opinion, with duplicate gas charges. I think Mr. Teele was right in his interpretation of it, but we may be both wrong.

Mr. Neumann: To which I respectfully except. Now, Mr. Teele states he wanted to make some statement.

The Master: Do you want to make a statement, Mr. Teele?

The Witness: I have not seen this edition of April, 1919. I don't know if it is any different from previous editions or not.

1124 Mr. Ransom: I think it is not in that respect.

Mr. Neumann: I move to strike out Mr. Ransom's statement. Of course the uniform system of accounts is introduced here in evidence. If he has introduced the one of April, 1919, it will of course be controlling.

The Master: However that may be, I do not think there is any

point in the question raised by counsel that Mr. Teele could have intended any purpose in omitting account numbers, because as I read it there is no account numbers for taxes.

Mr. Neumann: May I not have the witness' answer to that question?

The Master: I did not know there was an unanswered question. What is it?

Mr. Neumann: To make it perfectly clear on the record I will ask him.

Q. The reason you have not, upon Schedule 4 of Exhibit 65, placed either the folios of the ledger or the account which we contend it should go under the uniform system of accounts is that you did not believe there was any account that covered it in the uniform system of accounts?

A. I did not even consider it.

Q. You did not even consider it?

A. I did not even take it into consideration, because the schedule "Taxes" speaks for itself, and I did not think it necessary to earmark it.

Q. Now, Mr. Teele, are there any taxes of any kind, nature or description included in Schedule 4 which were paid in the year 1919, but related to taxes of prior years?

A. No.

1125 Q. How about a part of this \$1,298? Wasn't that part of that, \$471, for a prior year, a retroactive tax for a prior year?

A. I do not so consider it. The law under which the tax was paid was not passed and did not become a law until the year 1919, and the tax was assessed in the year 1919.

Q. For what year?

A. It was based upon the capital stock return made in the year 1918.

Q. For the year 1918?

A. No, the tax was assessed in the year 1919. The law became effective February 1, 1919, and I construe it as being a tax assessed by the taxing authorities in the year 1919, and applicable to 1919, and I have so contended in every case where I have had to deal with it.

Q. That is your interpretation of it.

A. That is my own interpretation of it.

Q. Now, coming down to the question of interest on taxes set forth in Schedule 4 of Exhibit 65, are there any items of interest on unpaid taxes for years other than the year 1919?

A. Well, the item of \$233.71 is the interest accrued at 7 per cent. for the period of 1919 during which taxes assessed prior to 1919 remained unpaid.

The Master: Just one minute. I should like to have, in this connection, the original vouchers or bills for the 1919 taxes. Will you see that I get them? What I have in mind is this: I think that this will be clearly a case where I shall estimate the operating expense, or calculate the operating expense as including the taxes assessed,

without an allowance for any interest, and without deduct-
1126 ing anything or giving any credit for possible deductions. In
other words, I am going to work on the theory that if there
is a reduction of taxes the interest will offset the saving to some ex-
tent.

Mr. Ransom: That is a very unfavorable basis to this company,
because this company does not have taxes of a controversial kind to
any appreciable extent.

The Master: But I am going to take the taxes in the amount as-
sessed against you on the theory that you ought to pay them when
due. Taking the very point that you raise that none of these taxes
are subject to controversy to any extent, there is no reason why there
should be interest.

Mr. Ransom: There are some 1917 taxes that are in controversy.

The Master: Based on the 1919 operating results I am going to
take the exact amount of taxes assessed against you for that year.
That is why I would like to have the bills, to get these figures
clearly on the record and mark the bills separately in evidence.

Mr. Ransom: Does your Honor hold to the view that you ex-
pressed formerly in the Consolidated case with respect to the facts
that any sums by which taxes once assessed may be reduced are not
to be credited to the benefit of consumers?

The Master: No, I do not think I ever made that statement. If
I did I was not accurate, or perhaps I have been misunderstood.
I am not dealing here with the method of keeping your accounts.

I am dealing here with the cost of making gas, for the pur-
1127 pose of determining the validity or invalidity of a statute.

In another form I perhaps am attempting to fix a rate. Now,
I say that for the purpose of determining the validity or invalidity of
a statute, or for the purpose of fixing a rate, we must have a definite
basis, namely, something that we absolutely know about. Now, the
public authorities assess this company a certain sum for capital stock
tax, real estate of corporations, franchise tax, and gross earnings tax.
As a public officer I must assume, in determining what rate the com-
pany must charge to protect itself, that those taxes are correct in
amount, and in determining how much it costs you to make gas,
that that is the amount of taxes that ought to be figured.

Mr. Ransom: That is, you must assume the regularity of the act
of the taxing authorities represented by these defendants.

The Master: Exactly, and assume that there is no reason for not
paying the bills, and there is no reason for an interest item. Now,
once you get away from that, and you begin to operate your com-
pany, then I say you have an entirely different question. Then,
of course, the amount you save goes to the credit of the company as
an operating credit. The amount of interest which you accumulate
must be an expense of operation, but that is an entirely different
thing. That may indicate in two or three or four years from now
that you saved more than I figured on, and that therefore you ought
to charge a little less for the gas, but now I think I have got
1128 to take the amount the public authorities have assessed
against you as a basis for fixing the amounts.

Mr. Ransom: Of course that rule in the Consolidated case has worked to lead your Honor to find a figure which is substantially less than the actual sums we are having to pay out, and for which we have no alternative.

The Master: In that case there was a little different situation. All general rules are subject to exceptions. In the Consolidated case I was confronted with the situation that there was in my judgment a duplication, in the first place because of the method of conducting the two companies——

Mr. Ransom: That was one question.

The Master: That was one question. Second, the real estate of corporations, in my judgment was so clearly a duplication, that in order to be perfectly safe, and to play on the safe side, although counsel for defendants thought I was not giving them enough, I felt it was safer for the complainant to give the defendant the benefit of the doubt, and I was breaking the rule that I thought was applicable to be sure that my judgment was right.

Mr. Ransom: It was a perfectly safe thing to do to the complainant, because it cut our taxes about two cents, that we have no alternative but to pay.

The Master: I don't think you will ever have to pay the real estate of corporations tax.

1129 Mr. Ransom: We will have to pay that or the special franchise tax, and we do have to pay the interest.

The Master: Because you are saving money in other ways. At any rate you know my views about it. I know that neither side is satisfied.

Mr. Cummings: I think you are right. The presumption always exists in favor of the assessment until the contrary is shown.

Mr. Tobin: Did Mr. Ransom have reference to the interest on the Special Franchise Taxes as assessed?

Mr. Ransom: I think the rule is that any taxes——

Mr. Neumann: Why don't you say what you had reference to? Why don't you give us a straight answer for once?

Mr. Ransom: Any taxes which the company in good faith contests on the advice of counsel, with some reasonable prospect of success, the company is entitled to charge to its operating expense in this kind of a case or any other, to interest accrued, and on the other hand the consumers are entitled to the benefit of the reduction. That is the law. Now, the question whether your view is reasonable, I think there is a great deal to be said on that.

Mr. Neumann: You mean that is what you contend is the law?

The Master: I am frank to confess that in the Consolidated case I hesitated to follow strictly the rule that I have laid down here, and I found too much uncertainty in attempting to determine the actual amount of taxes based upon the rule as you contend it to be, and which perhaps is the correct rule from that angle, and so I reached a result that I thought was what you would ultimately and actually pay.

1130 Mr. Ransom: I wish I could make an arrangement with you to pay these taxes, we paying you 7½ cents and you paying all the taxes and interest.

The Master: Well, in this case I am going to take the taxes as assessed.

Mr. Cummings: Mr. Ransom knows that as concerns real estate taxes, which includes all taxes on special franchises, that if there are any refunds he will get back a refund of the six per cent interest.

Mr. Ransom: The rule as I understand it is that with respect to any portions of taxes which are reduced, the interest on the amount by which the tax is reduced is omitted, and as to the portion of the tax which stands, the State authorities have not even the power, if they wished to, to remit the interest on that.

Mr. Cummings: My point is, if you get any reduction in——

Mr. Ransom: You mean if we pay voluntarily?

Mr. Cummings: You don't even have to pay it in under protest any more. If you get a reduction which you claim you are entitled to, the law says that you are also entitled to six per cent on the taxes that you recover back, so that you are amply protected.

The Master: Let us get along now.

1131 Q. Now, Mr. Teele, on Exhibit 65, Schedule 4, are there any other items of interest, any unpaid taxes that are applicable to taxes assessed for other years than 1919?

The Master: He answered that, he said yes, he thought there were some unpaid taxes in 1917—didn't you, Mr. Teele? Or was that Mr. Ransom's statement?

The Witness: I stated what the \$233.71 for interest accrued during the year 1919 was on.

The Master: That was 1917 taxes?

The Witness: That was 1917.

Q. I asked you whether there are any other items in this schedule?

A. Of interest on taxes, none.

Q. Special Franchise Interest amount, \$32.55 is an unpaid tax on Special Franchise for what year?

A. For 1917.

Q. Then that statement was not correct, your last statement, that there were none others?

A. You asked me if there was any other interest, or I so understood you.

Q. Then I am still asking you and I am calling your attention to the Special Franchise Tax Interest of \$32.55.

A. The interest, \$233.71——

Q. Is inclusive of those two items?

A. Is inclusive of these two items.

Q. Now, coming back to Schedule 1 of Exhibit 65, Sales of Gas, the total amount that you set out there is for private consumers and also the municipality, is that correct?

A. It is, and so shown on Schedule 1.

Q. And they are subdivided in Schedule 1?

A. Schedule 1.

1132 Q. Now, Mr. Teele, you recognize transmission pumping as a distribution charge, do you, under the Uniform System of Accounts?

The Master: Well, do you say it is not, Mr. Neumann?

Mr. Neumann: I want the witness to say.

Mr. Ransom: Objected to.

The Master: I don't think that that is a proper line of cross-examination of this witness.

Mr. Ransom: It is the first item under the Uniform System of Accounts—

The Master: I am reading now from page 44 of the Public Service Commission's Uniform System of Accounts, April, 1919:

"Transmission and Distribution Expenses. First subdivision, 631—Transmission Pumping.

"Charge to this account the cost of pumping gas through mains to the distribution system, including inspection and regulation of booster governors."

I don't see any purpose in cross-examining the witness: he said he took that as he understood it from the Uniform System of Accounts; whether he has properly segregated the items or properly indicated them by account numbers is not specially important, is it?

Mr. Neumann: I haven't any hesitancy in telling the Master what is in my mind.

The witness Woods, in one of those exhibits, put in transmission pumping as a part of the—

The Master: Operating Expense?

1133 Mr. Neumann: Operating Expense, and the point was that it was part of the Distribution Expense.

The Master: But it is an expense.

Mr. Neumann: That may be.

The Master: What difference does it make?

Mr. Neumann: On the question as to whether these exhibits conform to the Uniform System of Accounts, and whether the books correctly reflect that.

The Master: I will sustain the objection on that if it is made.

Mr. Ransom: It has already been objected to.

Mr. Neumann: I didn't hear the objection.

Mr. Ransom: I not only objected but I made a speech.

The Master: That is usual.

Mr. Neumann: Exception. Perhaps we will give you a chance to make a good speech.

Mr. Ransom: I usually am able to create my own opportunities.

Q. Mr. Teele, you made a study of the Uniform System of Accounts to an extent, have you?

A. I couldn't say that I have made a study of it; I have read it.

Q. You have read it and are thoroughly familiar with it?

A. I am more or less familiar with it.

Q. Would you say that the Uniform System of Accounts was well designed to bring out, in a concise and clear manner, the operating expenses and the revenues of the gas business?

Mr. Ransom: Objected to as not cross-examination.

1134 The Master: I will take Mr. Teele's answer on this.

Mr. Ransom: I think it is a very vague question; some parts of it may be and some parts may not be—some parts perhaps nobody will be able to understand.

Mr. Neumann: Why not let the witness explain?

Mr. Ransom: I am making an objection.

Mr. Neumann: He may know better than you do even though you were counsel to the Commission.

The Master: I think the same question was asked of Mr. Teele in the Consolidated case.

Mr. Ransom: But you will remember in and in this case you would not let me qualify him as an expert on the Uniform System of Accounts.

The Master: I will take this one answer. What do you think about the Uniform System of Accounts, do you think it is well designed or poorly designed?

Mr. Neumann: No, I must except to the Master reframing my question.

The Master: Isn't that your question?

Mr. Neumann: No. I press my previous question in the manner and form as I stated it.

The Master: What is your question, how does it differ from mine?

Mr. Neumann: Let the stenographer read it and I will stand on the record as I have made it.

Mr. Ransom: The witness answered fully.

The Master: Read the question.

1135 Q. (Read.)

Mr. Ransom: Exception.

The Witness: I should say that generally the Uniform System of Accounts is well planned to bring out the revenues and expenses. There are some things in it that are ambiguous; there are some things which I think, in the light of the experience of the corporation, the Commission itself would probably change.

I have not made a detailed study of it with a view to expressing an opinion as to its operation, but my observation, based upon my acquaintance with gas accounts, leads me to the opinion that it is generally well planned.

Q. Mr. Teele, at page 137 and 138 of the printed stenographic minutes, you testified that you checked the monthly and daily time slips showing the workmen's time distributed against the compilations of same, the journal and the ledger, and so forth, is that correct, do you recall that?

A. In the shop reports I believe—

Q. (Showing witness record.) A slip showing the workmen's time distribution.

A. Yes, that is true for the shop pay rolls, which is what I was talking about at that time, because that is the only place where there is a daily workmen's sheet.

Q. And that is what you meant by that?

A. Yes.

Q. You didn't mean by that, that those figures were correct; you didn't see them put down there; you don't know whether the time was actually spent, you took the figures as you found them?

1135 A. I took the figures as I found them on the reports signed by, or bearing the signature purporting to be the workman himself.

Q. And that is how those sheets are made up?

A. Yes.

Q. You have no knowledge of the handwriting of the person?

A. No.

Q. You simply took these sheets as being correct and as having been signed by the person whose name purports to be written thereon?

A. I did.

Q. These sheets form the basis of the pay roll, do they not?

A. They do.

Q. Now then, at page 138, folio 413, you testified that these workmen's sheets are distributed by symbols and later transformed to the uniform system of accounts of classification, is that correct?

A. Yes. The original sheets made out by the individual workmen indicate the kind of work that they are actually engaged upon and they are symbolized also.

Q. Who does this symbolizing?

A. It is printed on the sheets.

Q. I mean who does this symbolizing, does the workman who puts it down there?

A. No. The sheet which they fill out is a printed form on which different kinds of work are printed, and against the different kinds of work are printed the symbols which will be used later in classifying that work.

Q. Who makes the entries on that sheet, if you know?

A. They purport to be signed by the workman himself.

1137 Q. Would that lead you to suppose that the workman himself put the figures down as against the symbols?

A. The figures which he puts down are against the symbols, because the symbols are printed on the sheet.

Q. And so far as you know that is done by the workman?

A. As far as I know that is done by the workman.

Q. What checks if any did you make to show that this money had been actually received by the persons who signed these sheets and placed the time as against the different symbols?

Mr. Ransom: Objected to as incompetent and fully covered.

The Master: Overruled.

A. I did not check any individual vouchers against individual names appearing upon the pay rolls; I did check the cash disbursements as reported by the company against the total pay rolls.

Q. Now Mr. Teele, at page 142 of the stenographic minutes, folio 425, you testified with reference to rental of gas appliances, and

you stated that "We accept the amount of cash they have recorded and turned into their bank account as rentals on appliances;" is that correct; do you recall that?

A. The rental charges are made out on bills, which bills are aggregated and charged to accounts receivable, sundry debtors accounts, and against those accounts the cash collections are made. The uncollected balance outstanding at the end of the year on the sundry debtors ledger represents not only uncollected rentals, 1138 but it represents uncollected charges of other kinds that are charged to sundry debtors account. To that extent the cash which has been collected is a verification of the rentals charged.

Q. Now, I call your attention to this question and answer appearing in the stenographer's minutes, printed, at page 142, folios 424 and 425.

Mr. Ransom: Whose testimony is this?

The Master: This witness, as I understand.

Mr. Neumann: Why, of course.

Mr. Ransom: Of whose testimony?

The Master: This witness' testimony.

"Q. Now the rentals of gas appliances, what did you do to check and verify the figures which you have shown on this tabulation, Exhibit 55 for Identification as to that item."

Then there were objections, objection overruled and exception and then your answer:

"A. The total amount of cash collected by the company during the year is reported as rent of appliances. We accept the amount of cash which they have recorded and turned into their bank account as rentals on appliances. We do not go back of that."

A. Well, I——

Q. One moment, do you recall that question and that answer?

A. I do.

Q. And that was correct as you gave it?

A. What I had in mind, in making that answer, was just exactly what I have now stated, that the collections of cash against the charges made represent the realization, by the company, of its rentals on appliances.

1139 Q. Then that question and answer does not correctly reflect what you now think?

A. It does correctly reflect what I now think and correctly reflects what I had in my mind when I made that statement.

Q. And if there is any inconsistency between the two, which is controlling, the answer you gave as of April 30th to that question or the answer which you now give?

Mr. Ransom: Objected to on the ground there isn't any inconsistency.

The Master: Objection overruled.

A. I don't recognize any inconsistency.

Q. What knowledge if any did you have, from what sources the money that went into the bank was received, I mean personal knowledge?

A. I didn't handle any of the company's cash.

Q. You took it from the books?

A. Took it from the company's books and the bank accounts.

Q. So that taking, as an illustration, if for instance one day the company received \$100. in cash and paid out \$100. in cash, there would be nothing from which you could make any such deduction?

A. I don't understand your question.

Q. Well, you say in your answer of April 30th, that you took the amount they turned into their bank account as rental on appliances. Suppose you didn't turn the cash in but spent it for a petty disbursement?

A. But they deposit all their receipts.

Q. Suppose they had to use this cash immediately, and instead of sending to the bank for that cash, they had that cash on hand that day and they took the cash that had been received as 1140 rental for appliances and used it for legitimate expenditures in the business. How would you know that?

A. Well, either one transaction or the other was on the books and I would know if from the record; if neither transaction was on the books I would not know it.

Q. But you stated that you took as the amount of rental on appliances the amount that they turned into their bank account?

A. Well, I had in mind there that we took the cash collections against the sundry debtors the same as a man would in selling goods and charging them to his customers; the cash that he collects is the proceeds of his sales.

Q. Can you now say, in substance, to be fair with you, that your answer of April 30th as contained in the stenographer's minutes at page 142, folio 425, is not complete or correct?

A. No, I don't say so.

Q. What knowledge, if any, Mr. Teele did you have as to whether the amount received as rental for gas appliances was reasonable?

A. I have no knowledge as to whether it was reasonable—I haven't expressed any opinion as to whether it was.

Q. You simply took the book figures?

A. Simply took the book figures.

Q. Now, you testified as to the gross profit over the sale of gas appliances, at page 142, folio 426.

The Master: Yes, he took that from the books, too.

Q. You checked the income price against the outgoing price and you took the balance as correct, is that correct?

A. Taking into account the inventories.

1141 Q. Is that contained in your answer as given of April 30th?

A. I do not now recall what my answer was at that time.

Q. You have no direct knowledge of the quantities of appliances sold, have you?

A. I took the quantities of appliances sold based upon the copies of bills rendered for appliances sold and referred to the invoices for those same appliances or for similar appliances to determine the cost.

Q. How could you identify them?

A. By the description of the appliances as sold, contained in the carbon copy of the bills or charges.

Q. How was that indicated?

A. That is indicated by a description of the appliance.

The Master: The appliance has a name and a number?

The Witness: A name and number.

Q. And you checked each one of those?

A. I will have to refer to my audit sheet to see how they were checked; we checked every large numbers of them.

The Master: You didn't check them all?

The Witness: I am not sure, your Honor, whether they were all checked or not. I gave instructions to have them all checked and I haven't looked at the sheet to see whether they were completely checked or not (papers handed to the witness).

They checked a considerable number in each month, January, February, March, &c., right through, made tests on them.

1142 Q. Did I understand you to say just a short while ago that you gave instructions to check all of these?

A. I gave instructions to check on them and my recollection is now that the instructions were to check the larger items, large enough quantity in each month to satisfy them as to whether there were any differences arising, and if there were differences arising, they were to report any to me and I would give further instructions in regard to it.

Q. At folio 426 the answer I speak of contains these words: "Having satisfied ourselves as to the correctness of the cost of appliances sold, we have taken the balance of that account as correct, and have recorded it as the profit on sales of appliances. That is what you meant?"

A. That is what I meant.

Q. When you used those words?

A. I examined the invoices to satisfy myself as to the cost of the appliances sold.

Q. What check did you make of the payrolls?

Mr. Ransom: I think that has been covered twice.

The Master: I think so but I will allow him to say.

Mr. Neumann: All right; if it has been covered I won't go any further with it; I will submit it in the form of a schedule. That is all of Mr. Teele.

The Master: Anything else from the defendants?

Redirect examination.

By Mr. Ransom:

Q. Mr. Teele, reference was made to the number of tons 1143 of coal sold to the employees; are you able to state the number of tons as shown by the books and records as examined by you to have been sold to employees during 1919?

Mr. Neumann: Objected to on the ground it is immaterial, irrelevant and incompetent and not the proper way of proving it—not by this witness.

The sheets upon which those items are contained are already in evidence.

The Master: I will let the witness answer.

Mr. Neumann: Exception.

The Witness: I am.

Q. What is the number of tons and the amount of money realized?

Mr. Neumann: Before this witness is permitted to answer I would like to know whether those daily records of manufacture are in court here?

Mr. Ransom: I sent some of them back yesterday.

Mr. Neumann: I think it is manifestly unfair to ask this witness this question without having those records here so that we may cross-examine him.

The Master: I will let the witness answer, and if you want to call him later for cross-examination I will let you do that.

Mr. Neumann: Exception.

Mr. Ransom: It is clearly a summary of what is in the record.

The Witness: The tons sold were 60,354.

The Master: During the entire year 1919?

The Witness: During the entire year 1919.

The Master: According to the books?

The Witness: According to the books.

1144 Q. Have you the figure as to amounts of money?

A. \$567.52

Mr. Ransom: That is all.

Mr. Ransom: I produce Mr. Raynor now for cross-examination by the defendants.

Mr. Neumann: I just want about five minutes to look over his direct testimony before I proceed.

The Master: Very well.

Mr. Ransom: Are you willing that I should read in the testimony of Mr. McMillin now?

Mr. Neumann: I have no objection to that, provided it is done in accordance with the correspondence that has passed between us. We should get Mr. Chambers here, because he agreed to it.

Mr. Ransom: I will state the arrangement. Owing to the illness of Mr. McMillin, Mr. Emerson McMillin, I asked counsel for the defendants if they would be willing that the testimony of Mr. McMillin

as a witness in the Consolidated case be read in evidence in this case, with the same force and effect as though Mr. McMillin had testified herein, subject to the right of the defendants to read any portions of the cross-examination, subject also to the right of the defendants to call for the production of Mr. McMillin as a witness——

Mr. Neumann: One moment now.

Mr. Ransom: : Let me finish it.

Mr. Neumann: No, you have not put in what we have stated.
1145 Why not produce the entire correspondence and spread it on the record, and that will be the best proof of what arrangement we have entered into.

Mr. Ransom: I will put it in, then. I will send to my office; I have not got it here. There were four letters; I will send for them.

WILLIAM RAYNOR, resumed.

Cross-examination.

By Mr. Neumann:

Q. Mr. Raynor, during the year 1919 did this company keep any other books of account other than the books that have been produced here?

A. No.

Q. That is without any reservation of any kind?

A. Yes.

Q. You were with the company in 1915, were you not?

A. When?

Q. 1915?

A. Yes.

Q. In what capacity?

A. As Chief Clerk and general bookkeeper.

Q. You were working on the books in 1915 to some extent?

A. Yes, to a great extent.

Q. Beginning with the year 1915 what has been this company's position, so far as the bookkeeping end is concerned, as to charting operating expenses for depreciation?

Mr. Vilas: Objected to, not cross examination.

The Master: I will allow it.

Mr. Neumann: If your Honor please, I am asking him from the bookkeeping end, that is all.

1146 The Master: You may answer it.

A. We have made no arrangement for depreciation.

By the Master:

Q. You run a renewal and replacement account?

A. We run a renewal and replacement account, yes.

Q. Other than that you have not any?

A. No other account that we take care of depreciation in.

Q. You have a contingency account to which no entries have been transferred?

A. That is right.

Q. Outside of those two accounts is there any other account that takes up depreciation at all?

A. None at all.

Q. That is, since 1915.

A. None at all.

By Mr. Neumann:

Q. Have you a general account under Amortization-Gas?

A. We have not since 1915.

Q. When did you cease carrying such an account?

Mr. Vilas: I object to the question, on the ground of the assumption contained therein.

The Master: I will allow it. Did you at any time carry an Amortization account?

The Witness: Yes.

The Master: Up to when?

The Witness: 1915, I think.

Q. And since 1915 you have not carried any such account?

A. No.

Q. Are you familiar with the accounts in 1908 of this company?

1147 A. 1908?

Q. Yes.

A. No.

Q. In 1915 this company transferred the balance that was in the Accrued Amortization of Capital account to a new account called Reserve Contingency, did it not?

A. It was transferred to an account called Contingency.

Q. And at the same time you started a new account called Renewals and Replacements?

A. Yes.

Q. Is that correct?

A. Yes.

Q. Under whose direction did this change come about?

A. The action of the Board of Directors.

Q. Was that by resolution?

A. Yes.

Q. In the minutes of the Board of Directors?

A. Yes.

Q. And you have those minutes?

A. Yes.

Q. Is there anything contained in those minutes as to the reasons for the Board making this change?

Mr. Vilas: Objected to. In the first place, it has been fully covered.

The Master: Sustained.

Mr. Neumann: Upon what ground?

The Master: The minutes will show, if you will call for it.

Mr. Vilas: They are in the record—incorporated in the record yesterday.

Mr. Tobin: Not those asked for in the question by Mr. Neumann.

1148 The Master: The resolution will speak for itself.

Q Have you the minutes, Mr. Raynor?

A. No, I have not them with me.

Mr. Chambers: They do not show the reason for the change, do they, your Honor?

The Master: Mr. Neumann's question is what reason appears in the resolution for the change. The resolution speaks for itself.

Mr. Neumann: I said is there any reason? I think the Master misunderstood the question. It is not very often that it happens. May we have it read?

The Master: Yes, read that question.

The stenographer read the question as follows: "Is there anything contained in those minutes as to the reasons for the Board making this change?"

The Master: You mean in the minutes, outside of the resolution?

Mr. Neumann: Yes.

The Master: The minutes will speak for themselves. You may call for the minutes. Do you recall—it may save time—whether any reason was assigned in the minutes for making the change?

The Witness: There was a wording in that resolution previous to the explanation of setting up the Contingency account and the Renewals and Replacements, but I do not recall just what that wording was, whether it was explanatory or—

Q. I mean outside that resolution itself, is there anything contained in the minutes given as the reasons for the Board's action?

A. Not to my knowledge.

1149 Q. I mean in adopting that resolution.

A. Not to my knowledge.

The Master: You can call for those minutes and see what they did.

Q. Who in your company determines what is meant by the terms contingencies and replacements?

Mr. Ransom: Objected to as incompetent; the resolution will speak for itself.

The Master: Overruled.

Mr. Ransom: Exception.

A. The officers.

Q. Which officers?

Mr. Ransom: I object to the question. The matter of contingencies does not enter into this question at all, and neither as to 1918

or 1919 was there any amount set aside for contingencies in profit and loss account; it is not cross-examination of this witness, this witness did not testify to any such matter on direct.

The Master: I will overrule the objection.

Mr. Ransom: Exception. I do not think on a matter of this sort they should be permitted to roam into that. They had officers of the company before them who had more direct dealing with this.

The Master: Let us have an answer, Mr. Raynor. What officers act on that or make that determination?

The Witness: Well, that action was taken by the Board of Directors, but I do not know what officers prompted it.

Mr. Neumann: No, that was not the question.

1150 The Master: This is the only question I am going to allow, I think: During 1915, 1916 and 1917—

Mr. Neumann: One moment, if the Court please: that question of mine has not been answered.

The Master: No, I am going to try and get an answer.

Mr. Neumann: Yes.

By the Master:

Q. During 1915, 1916 and 1917 there were charges and credits to the contingency account, were there not?

A. Yes.

Q. Who made those entries?

A. I did.

Q. Who told you to make those particular entries in those accounts?

A. That instruction I got from Mr. Spear.

Q. So that Mr. Spear would tell you what items were properly chargeable to contingency account and which to renewals and replacements?

A. Yes.

Q. Or did you determine that yourself within the lines of the resolution?

A. Well, I did by referring to him, and he approved anything—

Q. You had set up the items that you were going to put to contingency and to renewals and replacements?

A. Yes, there was nothing charged against contingency, but anything charged to renewals and replacements was always made up by me and presented to Mr. Spear, who approved or disapproved.

1151 Q. Weren't there any items put into contingency at all during 1915, 1916 and 1917?

A. None at all.

Q. Not one?

A. Nothing charged except to reserve.

The Master: Then what is the use of wasting any more time on this?

Mr. Ransom: It is a mere segregation of profit and loss.

Mr. Neumann: Mr. Ransom may not think this is important now, but he will some time.

The Master: Let us go ahead now.

By Mr. Neumann:

Q I understood you to say that you placed nothing at all under the account marked Contingency during the years 1915 to 1919?

Mr. Ransom: Charges to it, he said.

Mr. Neumann: Well, charged to that account.

The Master: I understand that account is perfectly bare of any entries, is it not?

The Witness: Yes.

Mr. Ransom: Not bare of charges.

The Master: What?

The Witness: We have got the credits in the contingency reserve account and we have the debits in the contingency account, which was a part of our operating expenses during the years that it was active.

Q Did you have two accounts, one contingency and one contingency reserve?

A One offset the other.

Q Yes, there were two accounts, then?

A Yes.

Q One was contingency and the other was contingency reserve?

A Yes.

1152 Q In the contingency account there were no entries from 1915 to 1919?

A There were in 1915, 1916 and 1917.

Q Did you not in answer to a question of the Master say that that account was bare of entries from 1915 to 1919?

A I explained that there were not charges to the contingency reserve account.

Q What do you mean by saying there were no entries then, and now saying there were charges; where do you draw the distinction between entries and charges?

A I did not intend to say there were no entries.

Q Then in giving that answer to the Master's question, that was erroneous?

A No, it was not.

Mr. Ransom: Mr. Neumann is confusing two accounts, and confusing debits and credits.

Mr. Neumann: If you will just leave me alone, Judge, I will get this thing straightened out. If you are after the facts, I will get them for you.

Mr. Ransom: I am, and I have seen to it they are already in the record.

Q Let us get clear, Mr. Raynor, what you are testifying to. From 1915 to 1919 this company carried two accounts, one under the head-

ing Contingency and the other under the heading Contingency Reserve or Reserve Contingency; is that correct?

A. They are both called contingency, but one is a reserve.

Q. I am asking you how they were set up in your books.

A. One as contingency.

1153 Q. And the other as what?

A. As contingency, as a reserve, but not so called.

Q. Not so what?

A. Not so called. It is not labeled contingency reserve.

Q. How is it labeled in your books?

A. Contingency.

Q. These two accounts you are talking about, they are both labeled under the one word "contingency"?

A. Yes.

By the Master:

Q. I have before me Complainant's Exhibit No. 52, which is the general ledger; is it not?

A. Yes.

Q. General ledger No. 4. I find that you have got a printed index here, one general subdivision of Reserves; is that correct?

A. Yes, sir.

Q. You have certain accounts under Reserves?

A. Yes.

Q. You have a renewal and replacement account; is that right?

A. That is right.

Q. And a contingency account?

A. Right.

Q. Is there another account under Reserves?

A. Not for contingency.

Q. Page 188 is entitled "Reserves, Renewals and Replacements"?

A. Yes.

Q. On the right hand side, "Plant Withdrawn from Service." Page 190 is "Reserve Contingency, January 1, 1919, Balance \$161,149.66," and then in the next column, "\$161,149.66"?

1154 A. Yes, that is the balance.

Q. Yes; and where did that come from?

A. That came from the journal entry. It does not show in this ledger.

Q. On page 300 I find another account without the word "Reserve" but the word "Contingency." What is that intended to be?

Mr. Neumann. And the page is absolutely blank.

A. The account as used in connection with our operating expenses is now inactive, consequently there are no entries in that account.

Q. What I want to get clear is this: Is the account which appears on page 190, entitled "Reserve," and under that "Contingency," an entirely different account than the one appearing on page 300, which simply says, "Contingency"?

A. Oh, yes.

Q. What is the difference?

A. The one on page 188—

Q. 190.

A. On 190, is a reserve. When that account was active and we were charging five cents per thousand cubic feet of gas sold to produce that contingency reserve, we charged that amount each month in our cost of operation and distribution; we credited the reserve account.

Mr. Neumann: Five cents per thousand?

The Witness: Five cents per thousand cubic feet sold. Since the beginning of 1918, I think it was, we discontinued making that charge, and consequently discontinued accumulating any amount in our reserve account. So that that accounts for this page of this account being empty, and it accounts for no entry in there (indicating)

1155 Q. I have not got it clear yet. What difference is there between Reserve Contingency and Contingency? You have two accounts here, one on page 190 and one on page 300. What entries would you make in contingency, to illustrate?

A. If that was active this month we would figure five cents per thousand cubic feet of gas sold for the month.

Q. And you would put it into Contingency?

A. We would charge it to contingency. It would be considered one of our operating expenses, or practically an operating expense.

Q. Then would that be carried into the reserve?

A. And to offset that there would be a credit carried into the reserve account.

Q. Then there is to the credit of the reserve account \$101,000 yet?

A. Yes, that was the balance of that account on—

Q. January 1, 1919?

A. January 1, 1919, or January 1, 1918, when we discontinued the practice.

By Mr. Neumann:

Q. Why is not that carried into contingency account at page 300, that balance?

The Master: Well, he has already explained that.

A. That account is inactive.

The Master: He has explained that.

The Witness: We discontinued the practice of setting it up each month.

Q. And you do not carry the balance forward?

A. No, the balance at the end of 1917 was carried into profit and loss account—closed it out.

1156 Q. And at the end of 1919 the figures in Reserve Contingency, found on page 190 of the general ledger—

The Master: Ledger 4, Exhibit No. 52.

Q. (Continuing:) —should find its way into the profit and loss account, too.

A. No, because that is a reserve.

Q. That is a reserve?

A. Yes.

The Master: Anything else?

Mr. Neumann: Yes, there is quite some more.

Q. Is it fair to say of your testimony, Mr. Raynor, that the company now has on hand to the credit of Reserve Contingency the sum of \$101,000 odd?

A. It is.

Q. And that is on hand?

A. Yes.

Q. And to be accounted for by the company?

A. Yes.

Q. Mr. Raynor, will you turn to Operating Expense, Ledger No. 2, folio 84?

A. I have it.

Q. The total for the year, January, 1919, is \$15,960.36?

A. It is.

Q. Is that correct—and that is for boiler fuel, tar used?

A. Right.

Q. And the totals appearing above that total amount of \$15,960.66 are the monthly totals; is that correct?

A. Right.

Q. And those items find their way into this ledger from Journal No. 5?

1157 A. They do.

Q. From Complainant's Exhibit No. 53?

A. They do.

Q. Who fixes the price?

A. I think that price was given to me by Mr. Carter.

Q. Which Mr. Carter?

A. Rudolph A. Carter, our treasurer.

Q. Did anybody else have anything to do with that price, that you know of?

A. Not that I know of.

Q. He just gave you that price and you put it in the books; is that correct?

A. I put it in under his instruction.

Q. Under his instruction?

A. Yes.

Q. You had no personal knowledge of it yourself—the price?

A. Oh, no.

Q. You simply took the figure that Mr. Carter gave you as the price?

A. Yes.

Q. The basic price?

A. Right.

Q. And you put it in the books?

A. Right.

Q. Is that correct?

A. Yes.

Q. Now folio 88 of the same book, the ledger.

A. I have it.

Q. That is with reference to residuals sold. Where did you get the price that that is based on?

A. From Mr. Morrison, the superintendent at the works.

Q. Is there any voucher underlying that?

1158 A. He has a book in which he has a memorandum of it and a receipt from the cashier on the date that she received the money, when he turned it over to her.

Q. Did you see that?

A. Yes, I have seen that.

Q. And it was based on that that you put that entry in there?

A. What is that?

Q. And it was based on that that you put that entry in?

A. Yes; that is after it was put through the cash book.

Q. Coming back again, Mr. Raynor, to page 84 of Complainant's Exhibit 54, and speaking of this total of \$15,960.36, are there any vouchers or records of any kind underlying that, outside of what Mr. Carter told you?

A. The amount of tar used is shown on the works monthly reports.

Q. Now coming to the price—

A. Oh, the price is calculated on the basis of the number of gallons used, shown on that monthly report.

Q. But the figure was given to you by Mr. Carter?

A. Yes.

Q. And there is nothing else except his word as to what the figure is?

A. I have nothing else.

Q. And from that you put those entries in the books?

A. Yes, sir.

Q. Now, page 130 of the Operating Ledger indicates the repairs to gas mains, does it?

A. Yes, sir.

1159 Q. What does it include? Does it include material as well as labor?

A. That is most all labor.

Q. Is all of it?

The Master: Most of it, he says.

A. Practically all of it.

Q. Which items on that page are not labor? Just call them off.

A. There is one of March 31st of \$18.75 which might be materials, but it is not materials that would come from our stocks. It might be some we bought outside.

Q. Would it be fair to say that probably 90 per cent of that account, totaling \$5,697.02, is exclusively for labor?

A. Yes.

Q. Would these figures find their basis in the payrolls for the various months, indicating the figures on page 130 totaling \$5,697.02?

A. Up to the first of June, yes; after that, no.

Q. Why not after June 1st?

A. We changed our practice of paying Sullivan Brothers on our payrolls, and they bill us for every repair that is made.

Q. So that for the first five months your payrolls are made up in one form, and in the next succeeding seven months in a different form?

A. Yes, as regards repairs to gas mains.

Q. You are satisfied, are you, that none of the items here, "Repair, Gas Mains," page 130, up to the items including May 31, 1919, are on the payrolls?

A. I am satisfied that they are.

Q. You are satisfied that they are on the payrolls?

A. Yes.

1160 Q. After that you are satisfied that they are not?

A. Yes.

The Master: Then it is vouchers of Sullivan Brothers?

The Witness: Yes.

Q. Did you make these entries yourself?

A. No.

Q. You mean that if the entries are correctly kept that would be true?

A. Yes.

Q. You have no personal knowledge of it?

A. I have not made the entries in there, if that is what you mean.

Q. So that you don't know it of your own knowledge?

A. If I understand what you mean by the question, I don't know it of my own knowledge.

Q. Now, turn to page 68 of this same exhibit. The heading there is, "Repairs, Gas Apparatus, Station Holder Labor"—is that correct?

A. That is right.

Q. And the total for the year 1919 is \$6,327.77?

A. That is right.

Q. Now, are there any items there that will not be found on the payrolls?

A. Yes.

Q. Which items?

A. One in June for \$95.22; one in July for \$106.37, one in August for \$392.56; one in September for \$193.18; one in October for \$49.37; one in November for \$425.99.

Q. Where will that be found?

A. In the Accounts Payable.

The Master: Is that Sullivan Brothers?

The Witness: Some of it.

1161 The Master: You had different people doing that work?

The Witness: There may have been, in working on the station holders

Q. Now, having reference to the journal, Exhibit 53, page 169, and taking the entry from the Ledger, page 68, October 31st, Accounts Payable, \$49.37, and directing your attention to the Journal, does the Journal indicate to whom that was paid?

A. Yes.

Q. How?

A. \$10.94 to Sullivan Brothers; \$38.43 to Sullivan Brothers. That makes up the \$49.37.

Q. And that would be true of all these items that you have taken out of this account which you say are not directly traceable to the payroll?

A. Yes, sir.

Q. The course of procedure that you followed?

A. Yes, sir.

Q. What I mean to say is this: Did you put these figures in the book, the Operating Ledger, page 68, yourself?

A. I did not.

Q. You have no personal knowledge of it?

A. Not as to the direct entries.

Q. Now, take page 72. The title there is, "Repair of Gas Apparatus, Materials"?

A. That is right.

Q. And the total is what amount?

A. \$12,891.89 is the balance of that account.

Q. Now, what does that account contain?

A. Materials used in repairs of gas apparatus.

Q. Only materials?

A. Yes.

1162 Q. No other items are in there except materials?

A. That is all, unless somebody, some outside person in providing some of those materials may have actually made the repairs.

Q. How would that be indicated on your books?

A. That would show on the vouchers.

Q. I am asking you how it would be indicated on the books?

A. It would appear in here all under the head of "Materials".

Q. And it would be inclusive of some items of labor?

A. It might.

Q. So that so far as this particular account is concerned, although headed "Materials," it may include labor?

A. It may.

Q. You would not be sure of that?

A. No, I would not be sure of any specific item or amount.

Q. Do you know of your own knowledge whether this particular account, referring to page 72 of the Operating Ledger, does contain any item of labor?

Mr. Ransom: I object to that as incompetent. Of course it takes labor to get up materials.

The Master: Objection overruled.

A. I do not know positively.

The Master: Some of these items marked "Accounts Payable" might include some labor, is that the idea?

The Witness: Yes, somebody might perform a piece of repairs for us, but they don't differentiate between the labor and materials.

1163 The Master: They bill it to you as materials?

The Witness: They bill it to us for the job; we don't know how much the labor is.

The Master: Next question.

Q. Now, page 166, that account is headed what?

A. "Commercial Department, Collecting, Regular."

Q. Now, what does that last word, "Regular" mean?

A. That means collecting bills rendered for gas consumed through regular meters.

Q. Not prepayment meters?

A. Not prepayment.

Q. Now, the total of that account for the year 1910 is what?

A. \$4,069.67.

Q. And is that account solely and wholly for labor?

A. No.

Q. What other items are in there that are not for labor?

A. Carfare.

Q. And what is the amount of that, roughly speaking? About 10% of the entire amount?

A. It would be less than 10%.

Q. It would be less than 10%?

A. Yes, sir.

Q. So that it is fair to say that about 90% of this account is wholly and solely for labor?

A. It is.

The Master: What is the purpose of this cross, Mr. Neumann? I cannot seem to get it.

Mr. Neumann: The purpose of this cross-examination is, as I understand, to show in a short while, as soon as my people
1164 can match up with the Uniform System of Accounts, that this was an unusual year as to these items.

The Master: What do you mean by an unusual year?

Mr. Neumann: Unusual in the amount that they expended, unusual to this extent, that even taking into consideration the highest percentage that they have shown on their tabulations, that there was an unusual number of men employed for one year as against other years.

The Master: What has this inquiry to do with that, whether 90% of it was labor and 10% carfare?

Mr. Neumann: I want to eliminate any question that we may be wrong, that we have taken into consideration items that are not labor.

Q. Mr. Rayner, you recognize the distinction that the Uniform System of Accounts attempts to draw by keeping separate and distinct items of labor and items of material?

Mr. Ransom: I object to that as incompetent, irrelevant and immaterial, not cross-examination of the witness, in view of the statement just made by counsel.

The Master: Objection sustained.

Mr. Neumann: Exception. Have you Exhibit No. 70?

Mr. Vilas: What is Exhibit No. 70?

Mr. Neumann: It relates to mains and services.

Mr. Ransom: Complainant's Exhibit No. 70 is produced.

Q. Mr. Raynor, did you at any time sell any land to the New York & Queens Gas Company?

1165 Mr. Ransom: I object to that as incompetent, irrelevant and immaterial and not cross-examination.

The Master: I will allow it.

Mr. Ransom: Here is a man who part of the time was bookkeeper, part of the time assistant——

The Master: Did you ever sell any land to the New York & Queens Gas Company?

Mr. Ransom: Himself personally?

The Master: That is the question.

Mr. Neumann: That is the first question, we don't know what will develop. Did you introduce the title in this case, did you introduce Exhibit 45? You ought to know what it is.

The Master: I have overruled the objection, and an exception is allowed to the complainant.

Now, Mr. Raynor, did you ever sell any land to the New York & Queens Gas Company?

The Witness: I never sold any land to the company——

Q. Was the title to some land taken in your name, and then you transferred it to the company?

A. Yes.

The Master: Go ahead. Don't let's waste time on that. I have done that hundreds of times.

Q. Were you the owner of that land?

A. I took title for the company and then transferred it to the company.

The Master: What is the use of wasting time on that sort of thing?

1166 Mr. Neumann: Why not have it on the record what the fact is?

The Master: I could see what the fact is.

Q. Did you ever make any entries in Exhibit No. 70?

A. I think I made two or three.

Q. Can you indicate which ones you made?

A. I made three.

The Master: What are they?

Q. Just call them off.

A. In January, 1919, No. 801, main on 16th Street, Flushing; No. 802, No. 803.

Q. Where did you get the information on which you based those entries?

A. From the voucher rendered by Sullivan Brothers in connection with the order to lay the mains.

Q. What did you do beside getting the voucher, did you do anything else to check it?

A. I had the report of our superintendent showing the quantity of materials used.

Q. By which you mean Mr. Morrison?

A. Mr. McKenna.

Q. You mean Mr. McKenna?

A. Yes. A report was made up in the shop from the report made by Sullivan Brothers of the material put in there, and the prices were put in at the office and then placed in this book.

Q. The prices were put on in the office by whom?

A. I believe they were given to the chief clerk of the shop by Miss Mold.

Q. Do you know where she got them from?

A. From our records of prices.

Q. What do you mean by your records of prices?

1167 A. She keeps a memorandum of prices of various materials.

Q. You mean current prices?

A. Current prices.

Q. And she took those prices from that, and you accepted them?

A. Yes, sir.

Q. And put it in the book?

A. Yes, sir.

Mr. Neumann: That is all.

The Master: Let me get this clear in my mind. Mr. Neumann, what is your point there, that he should have taken the actual prices for materials?

Mr. Neumann: I am simply trying to prove what they did.

The Master: There must be some point in it.

Mr. Neumann: I think it speaks for itself.

The Master: If it did I would not have to speak.

Mr. Neumann: I think the record is quite clear as to what they did with reference to those three items.

The Master: Will you tell the Master what you claim it proves?

Mr. Neumann: I am showing that the records are not correctly kept and cannot be relied on. That is what I am showing.

The Master: Anything else with this witness?

By Mr. Tobin:

Q. Mr. Raynor, referring to Exhibit 52, page 2, which is designated as Fixed Capital, December 31, 1908, in the first line I find it reads, "1919, February 1st Balance, \$1,381,953.37"?

1168 A. That is right.

Q. Is that the fixed capital account as it appeared on the books on December 31, 1908?

A. Less any withdrawals from it.

Q. Since that time?

A. Since that time

The Master: And plus additions?

The Witness: There are no additions to that account, not to fixed capital as of December 31, 1908.

Mr. Ransom: There are two accounts. One is fixed capital since December 31, 1908, which has additions since that time.

Q. Mr. Raynor, can you tell us as to any detail, or where we will find any detail of this amount which was the balance, I will say, of that fixed capital account on January 1, 1919, amounting to, as it appears in this book, page 2, to \$1,381,953.37?

Mr. Ransom: I object to that as not cross examination.

A. Where will you find the details of that balance?

Q. Yes, where will the details of that be found?

A. It is shown right underneath it. The total of this equals this figure, which is the balance brought forward.

Q. Will you read into the record the detail?

Mr. Ransom: I object to reading into the record.

The Master: Let us have it.

A. On line 1, the balance of that account is brought forward from the previous ledger, \$1,381,953.37, and ruled off.

Under that, Franchises, etc., \$1,022,407.52.

Real Estate and Buildings, \$75,089.07.

1169 Mains, \$172,993.89.

Services, \$51,351.93.

Street Lamps, \$2,054.16.

Meters, \$37,240.37.

Meter Installations, \$15,070.93.

Tools, \$1,637.67.

Office Fixtures, \$2,147.

Stable Fixtures, \$262.58.

Are Lamps, \$1,698.25.

The Master: Which makes up the total of \$1,381,953.37—is that right?

The Witness: That is right.

Q. Now, referring to the item of Franchises, etc., \$1,022,407.52, is there a separation on your books anywhere as to that particular item?

Mr. Ransom: I object to that as incompetent. The books speak for themselves.

Mr. Tobin: Well, we tried to find out, if you please, and that is why I asked the witness.

The Master: Objection overruled.

A. I do not know; I have never gone back that far.

The Master: Now, that fixed capital account of December 31, 1908, on December 31, 1919, was down to \$1,376,796.37, is that right?

The Witness: Yes, after withdrawals.

The Master: Those few items were withdrawn during the year, leaving that balance?

The Witness: Yes, sir.

The Master: What is this "Boilers and Accessories," March 31, 1920?

The Witness: It was added to it, because in 1918, I think, that amount was withdrawn, it was overdrawn, it was an over
1170 estimate made on a certain withdrawal, and consequently it was put back.

The Master: Now, where is the capital account other than fixed capital of December 31, 1908?

The Witness: The page following.

The Master: You don't carry them in one account, then?

The Witness: Oh, no.

The Master: All right, what is the next question?

Mr. Ransom: The Commission required the segregation in that form of everything as of December 31, 1908.

Mr. Tobin: That is not necessary, and I ask that be stricken out.

The Master: Motion denied.

Q. How long have you had charge of the books, Mr. Raynor, that is, I mean dating back to when?

A. The latter part of 1913.

Q. In 1913 you took up the charge of the books?

A. Yes, sir.

Q. Do you recall any separation of that item on the books from 1913, on to this date, of the item which I have designated as Franchises, etc.?

A. No.

Q. And you know of no separation?

A. No.

Q. Of that item?

A. No.

Q. Will you be good enough to refer me to the mains and services account? On page 38 of Exhibit 52 is shown the account of trunk lines and mains. Do we understand that to include all the
1171 lines of mains laid, that were laid during the year 1919?

Mr. Ransom: I object to that as not within the scope of cross examination.

The Master: Objection overruled.

A. Yes.

Q. Does this account as shown on page 38 show all of the trunk lines and mains actually laid in the year 1919?

A. I think it does.

Q. Does it indicate all of the trunk lines and mains in actual use on December 31, 1919, if we take the item as it appears at the end of the year?

Mr. Ransom: I object to that as vague. Does he refer to the amount of money or to the mileage of the different kinds of mains, and the sizes of main?

Mr. Tobin: I asked a plain question, I think.

Mr. Ransom: The question was unintelligible to me.

The Master: What is the question?

Mr. Tobin: I asked if pages 38 and 39 show all of the trunk lines and mains in actual service—

The Master: What is your point, whether it includes mains that are not actually being used?

Mr. Tobin: Yes, sir.

The Master: Why don't you ask him that. Mr. Raynor, does this account as carried on pages 38 and 39 include any mains that are in the ground but not actually in use?

The Witness: Not to my knowledge.

1172 Q. Is there any book to which you can refer me to show
the extent of mileage of mains and services laid in the year
1919?

The Master: Doesn't the main book show that?

Mr. Ransom: Exhibit 70. I object to this line of examination. The witness is not the man who kept this Exhibit 70. The books of account refer to investments. They show the investment since December 31st, 1908, in mains, but they do not show mileage.

The Master: Well, let us have it. He wants to know what the mileage was of mains laid in 1919.

The Witness: Here it is.

The Master: Beginning with your entry No. 801?

The Witness: Yes, sir.

The Master: And going on it shows the extent of mains laid in the year, in feet?

The Witness: It shows the different sizes of mains, the feet and the miles.

Q. Can you tell us how this record is made up?

Mr. Ransom: I object to that as not cross-examination.

The Master: I will sustain it on the ground that Mr. Neumann has already covered it.

Mr. Ransom: And Mr. Spear, who put it in, covered it.

The Master: Have you any point that you want to develop, Mr. Tobin?

Mr. Tobin: I want to try to get on the record, without going all through the books, the extent of the mains laid in the year
1173 1919, the mileage of those mains, the cost on a mileage basis,
or any other basis that he may care to submit, I mean by the

company, and take in the same way the item of services. We will be met later with the testimony of Mr. Miller as to the mains and services that the company owns, and what he deems to be the value of those mains and services. Now I would like to get the record here to show what the company actually did in 1919, and what it cost them. That is as close as we can get to the figures that would be obtainable from the company.

Mr. Ransom: The books show what was laid in 1919 and what it cost.

Mr. Tobin: Yes, but it does not show it in just exactly that way.

The Master: What is your position now, Mr. Raynor?

The Witness: Secretary.

The Master: In charge of the books?

The Witness: I have supervision over them.

The Master: Of all the books?

The Witness: Yes.

Mr. Ransom: Secretary since when?

The Witness: Some time in January, 1920.

Mr. Tobin: I can do it in another way, if they don't care to have it done that way.

The Master: Well, it is simply a question of what is the quickest way.

Mr. Tobin: This will be the quickest way, if the Master please.

The Master: I doubt it.

Mr. Tobin: If they will admit that the 1919 report to the 1174 State Board of Tax Commissioners, which sets forth the company's reports—

The Master: You don't have to have their admission. If you want to offer that report in evidence, offer it.

Mr. Tobin: I offer it in evidence, if the Master please.

The Master: Mr. Tobin offers in evidence the report of the complainant company to the State Board of Tax Commissioners for the year 1919.

Mr. Ransom: I object to it on the ground that a report made for tax purposes is not either admissible or controlling as against the company or against investors in the company, in a case involving the issue of confiscation. Irrespective of what report may have been made, under the recent decision of the Court of Appeals in the Holmes Electric Company case, as in other cases, a tax report does not become a measure, or an estoppel against the rights of the owners of a corporate enterprise.

The Master: No, but it is some evidence for instance, of the extent of the mains laid during the year, isn't it?

Mr. Cummings: That would be true of any kind of report, wouldn't it?

Mr. Ransom: The Court of Appeals has just indicated the contrary.

The Master: That is no evidence at all?

Mr. Ransom: No evidence at all.

Mr. Tobin: I guess not.

The Master: As to the extent of mains laid?

1175 Mr. Ransom: Not on that precise question, but as no evidence at all against the company. They have entirely rejected it.

Mr. Tobin: I think he is entirely wrong.

Mr. Ransom: There were two dissenting Judges in the Court of Appeals.

The Master: I will take it over the objection.

Mr. Ransom: Exception.

Report received in evidence and marked Defendants' Exhibit L.

The Master: If I am satisfied that any statement made in that report is in error, I shall disregard it, but I think it is some evidence of the fact, a statement made by the company officially.

Mr. Ransom: Then it is offered as a statement against interest?

The Master: It must be in the nature of things.

Mr. Ransom: On that basis I am quite reconciled.

The Master: That is the only theory on which it could be offered.

Q. You had charge of the making up of this particular report?

A. Parts of it.

Q. Who had charge of the other parts of it?

A. Mr. Spear made up that record for the mains and services.

Q. That is what is known as S. F. Form B 2?

A. Yes.

Q. He had charge of that particular part?

A. Yes.

Q. As to what is known as the financial report, S. F. Form B, for the year ending December 31st, 1919—

1176 A. I compiled practically all of that.

Q. Who else had to do with it?

A. Well, some of this detail in front was copied from the Public Service Commission reports and it is all embodied in there.

Q. Are you able to say that this report is correct as taken from the record of the company?

A. It is, to the best of my knowledge and belief.

The Master: Who verified that report?

Mr. Tobin: It is signed by Mr. Spear and it was sworn to before Mr. Raynor.

Q. In the item of mains and services, did the company, in the year 1919, purchase any pipe or services, if they might be so termed, from the Consolidated Gas Company?

A. I don't recall having bought any from that company.

Q. Where did you obtain your supplies?

Mr. Ransom: Objected to as not cross examination of this witness.

The Master: Objection sustained.

Q. Did you buy any pipe or services from any of the subsidiary companies of the Consolidated Gas Company?

Mr. Ransom: Same objection, that has been covered by other witnesses.

The Master: I think so.

Mr. Tobin: No, it has not.

The Master: I am going to sustain the objection.

Q Well, taking the value that you have placed in this report, Schedule 69, which is entitled, Property Schedule Summary, in the third column it reads at the top "Tangible real property in streets, highways and public places, exclusive of paving" and in the 1177 subdivision there which would be properly known as column 3 of this schedule, it says the present value of \$613,668.78. How did you make up that particular figure, sir?

Mr. Ransom: Objected to, the question assumes various facts that are contrary to the record; and in the second place the kind of value which is stated on the face of the report put down here for tax purposes is not any basis recognized in this state.

Mr. Cummings: That is the best answer to the——

The Master: Objection sustained on the ground that the report itself is the proper basis of the valuation.

Q Well, taking the cost of mains and services that were added to the account as it stood on January 1, 1919, how did you obtain that value?

The Master: What is that?

Q Taking the mains and services laid in the year 1919, which were added to the mains and services value as of January 1, 1919, how did you obtain the figures there necessary to add to the mains and services as they stood on January 1, 1919?

Mr. Ransom: Objected to on the same grounds, not cross examination of this witness. You can't put in an exhibit and then turn around and cross examine the witness about that exhibit. The document itself shows the method and the peculiar basis laid down by the statute.

Mr. Tobin: The statute has nothing to do with it; I am simply asking Mr. Raynor how he got his figure that was put in there for the mains and services for 1919.

1178 The Master: Put in where?

Mr. Tobin: Put in this report.

The Master: Objection sustained.

Mr. Tobin: Exception, if your Honor please. I think we are entitled to know how they obtained their figures.

Q What source did you get it from, Mr. Raynor? You said that you made up this report, this schedule 69——

The Master: He didn't have anything to do with the mains and services.

Mr. Raynor: He said he made up this report.

Mr. Ransom: He certainly did not say that.

Mr. Tobin: He said he didn't make up this particular report, the

supplemental report, but I am referring to the financial report which he said he did make up.

The Master: What part of it are you referring to?

Mr. Tobin: Schedule 69, which is part of the financial report; that is entirely separate from this supplemental report.

The Master: What item on Exhibit 69 are you talking about?

Mr. Tobin: I am asking how he made up that particular item, \$613,668.78; what was the source of information for that figure.

Mr. Ransom: Objected to.

The Master: I will let Mr. Raynor say where this figure comes from on Schedule 69.

Q. Oh, state it on the record, Mr. Raynor.

The Master: He has stated it on the record; he said it is shown in the remarks on column 2—is that the idea?

1179 The Witness: Yes, sir.

Q. Where did you obtain this typewritten sheet which is pasted into Schedule 69 of this report?

Mr. Ransom: Objected to, it doesn't appear that he obtained it; it is not a report which he made.

Mr. Tobin: He said he made up the report.

Mr. Ransom: He said he made up some parts.

The Master: I am going to allow the witness to say whether he pasted this typewritten sheet on here.

The Witness: I did.

The Master: Where did you get it from?

The Witness: It was made up after consultation with Mr. Brundage.

The Master: Who got it up, you and Mr. Brundage, or did Mr. Brundage give it to you or did you make it up and submit it to Mr. Brundage?

The Witness: We worked on it together.

The Master: Next question.

Q. How much of it did you make up, Mr. Raynor?

Mr. Ransom: Objected to as incompetent and not cross examination; counsel should not be allowed to cross examine as to his own exhibits.

The Master: I will sustain the objection. You have got in the record here the report that they made and the basis upon which it was made, with an explanation of the various items. I do not think you are entitled to any more.

1180 If that is of any value to the defendants, they are entitled to avail themselves of it and are entitled to any benefit they may get from it.

Mr. Tobin: I don't know, if your Honor please, I don't think that there is anything here in this typewritten statement which refers to this particular column.

The Master: Which is column 1?

Mr. Tobin: There is no mark there.

The Master: Which is column 1?

Mr. Tobin: I don't know as they designate it in any particular way; they have column 1, 2, 3, 7, 3—

Mr. Ransom: Evidently counsel doesn't like his own exhibit.

Mr. Tobin: You are running away from it, that is the reason.

Mr. Ransom: I am standing on it.

Q. Referring to Column 1, Mr. Raynor, it states here in the type-written slip pasted on this schedule, which is the tangible real property in streets, highways and public places exclusive of paving, that the subsequent construction work in streets has been added and adjusted from time to time by values placed upon the records of such property as shown at time of report. Will you kindly indicate just what you did, as concerns this particular phraseology of the type-written statement, as to that which had to do with the mains and services laid in the year 1919?

Mr. Ransom: Objected to as incompetent, not cross examination, not within the scope of any matter concerning which this witness testified, directly or indirectly, on direct.

1181 Mr. Tobin: He said he made up the report.

Mr. Ransom: He didn't even say that on direct and didn't say it on cross.

Mr. Tobin: Yes, he did.

Mr. Ransom: If it is an admission, it speaks for itself; you can't put it in and then quarrel with it; whatever it admits, it admits.

The Master: I sustain the objection.

Q. Then, Mr. Raynor, how did you treat, as concerns this report, the mains and services laid in the year 1919?

Mr. Ransom: Objected to upon the same grounds.

The Master: I sustain the objection.

Q. How did you bring into this report, as concerns Column 1 of Schedule 69, the value or cost of the mains and services laid in the year 1919?

Mr. Ransom: Same objection.

The Master: I sustain the objection.

Q. Can you tell us where you obtained the figures that you set forth in Column 1 of Schedule 69?

Mr. Ransom: Same objection.

The Master: Sustained.

Mr. Tobin: I think we are entitled to know where he got the figures from, if your Honor please.

The Master: I don't think you are entitled to cross examine this witness on that report.

Mr. Cummings: He is a hostile witness, your Honor.

Mr. Ransom: He is anything but hostile.

1182 Mr. Cummings: Yes, he is.

Mr. Ransom: He is the most friendly witness we have had.

Q. Tell us, Mr. Raynor, what part of this typewritten statement you prepared, if you will, please?

Mr. Ransom: Objected to upon the same grounds.

The Master: Sustained.

Q. Did you prepare what reads here as Column 1 of this typewritten statement?

Mr. Ransom: Same objection.

The Master: Sustained.

Q. Did you prepare what is set forth here as Column 2?

The Master: Sustained.

Q. Column 5.

The Master: There is no use calling off all the columns.

Mr. Tobin: I don't think it is fair to rule it out.

Q. Mr. Raynor, referring to Schedule 68, page 32 of this Exhibit I, did you prepare that schedule?

Mr. Ransom: Same objection.

The Master: Same ruling.

Q. Did you physically paste on the memorandum or slip which is attached to that particular Schedule 68, page 32 of this exhibit?

Mr. Ransom: Same objection.

The Master: Same ruling.

Q. Where did you obtain that particular typewritten memorandum which is attached to Schedule 68, page 32?

Mr. Ransom: Same objection.

1183 Mr. Tobin: Wait a moment, I think we are entitled to know where he obtained it. If he made it up out of his head we want to know.

Mr. Ransom: You must have known or you wouldn't have put it in evidence.

Mr. Tobin: Well, you know better, why make a silly remark like that.

Mr. Neumann: Well, he may not know any better, why presume he does?

Mr. Tobin: I think we are entitled to know where he got this typewritten statement from.

The Master: I have ruled on it.

Mr. Tobin: Do you mean to say you will not give us the privilege of knowing, from Mr. Raynor, how he obtained this particular slip and how he happened to put it in here?

The Master: I have made up my mind not to allow the cross examination of this witness on that report.

Mr. Tobin: On what ground, if your Honor please?

The Master: On the ground that I don't think it is cross examination of anything brought out from the witness on direct.

Mr. Cummings: Well, your Honor was after information before and here is the way to get it.

Mr. Tobin: This man is down here as an officer of the company; as we understand it, he is the Assistant Secretary of the Company. I don't see why we are not permitted to ask him about a report which he made to a public body. What do you want us to do, Mr. Master?

1184 The Master: You want me to answer that?

Mr. Tobin: Yes.

The Master: Go on and ask the next question; try your case.

Mr. Tobin: I am trying to do the best I can.

The Master: You can't ask questions that I rule you out on, you have got to ask something else.

Q You prepared this report, did you not, Mr. Raynor?

The Master: Oh, we have had that, we know all about it, how it was prepared.

Q Where did you get your information from to make up this report?

Mr. Ransom: Same objection.

The Master: Same ruling.

Q Did you get the data that is in this report from the books of the company?

Mr. Ransom: Same objection.

The Master: I will let him answer that.

Mr. Ransom: I object on the ground that it affirmatively appears—

Mr. Tobin: Oh, the Master has ruled.

The Master: Is this report based on the books of the company—exception allowed to the complainant.

The Witness: Yes.

Q Is it based entirely on the books of the company?

Mr. Ransom: Objected to.

The Master: Sustained.

Q Mr. Raynor, will you identify this signature as Notary Public, as appears on this blank form, to be your signature?

1185 A. Yes, sir.

Q And also the signature of Mr. Spear, which is signed as Vice-President of the company?

A. Yes, sir.

Q And attached to what is known as Financial S. F., Form B?

A. Yes, sir.

Q And your name as Notary and Mr. Spear's name as Vice-President of this company is attached to what is known as Gas Statement S. F. Form B-2?

A. Yes.

Q Two sheets, four pages—thank you.

Mr. Ransom: Is that all? That is all, Mr. Raynor. Mr. Miller, take the stand.

Mr. Neumann: Is this direct?

Mr. Ransom: I have a few more questions of Mr. Miller.

The Master: I just want to recall Mr. Teele for a minute myself.

ARTHUR W. TEELE recalled.

By the Master:

Q. On Schedule 4 of Exhibit 65 there is an item, New York State Taxes, \$1,749.10; is this the Assessment Notice that I now show you (showing witness paper)?

A. It is.

The Master: Mark it in evidence as a complainant's exhibit.

Mr. Neumann: Over our objection.

Mr. Chambers: Objected to as incompetent, irrelevant and immaterial.

The Master: Overruled.

1186 Mr. Chambers: I object to the Master offering it in evidence.

Mr. Ransom: The complainant offers it in evidence.

Mr. Chambers: You didn't until the Master offered it.

Mr. Neumann: Exception.

Marked Complainant's Exhibit No. 91.

Q. The next item, New York City, Special Franchise Tax, \$7,382.54; is this the bill for that (showing witness paper)?

A. It is.

Mr. Ransom: Offer it in evidence.

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, and I might call the Master's attention to the fact that since these exhibits are all checked by men who purport to be officers of the company, I cannot quite see why Mr. Teele is offered as a witness when there might be some cross examination on them, and the officers of the company are here present at this particular time.

The Master: Overruled, mark this as an exhibit.

Mr. Tobin: We take an exception to it; we don't believe it should be introduced in this way.

Marked Complainant's Exhibit No. 92.

Q. The next item is Real Estate of Corporation, \$28.20?

A. There is 24 cents discount.

Q. Is this the bill to which you referred in that item, a bill for \$28.44?

A. It is.

1187 Q. Apparently paid with a discount allowed of 24 cents?

A. It was.

The Master: You offer it?

Mr. Ransom: I offer it.

Mr. Tobin: Same objection.

Marked Complainant's Exhibit No. 93.

Q. The bill is for \$28.44 and the amount paid, however, is only \$28.20 and as I understand it, you identify this bill with the item of \$28.20 on Schedule 4 of Exhibit 65?

A. I do.

Mr. Neumann: Same objection.

Q. And that is the bill to which you referred in your schedule?

A. It is.

Q. In other words, the bills which I have been showing you and which you identified are the bills to which you referred in your schedule?

A. Yes.

Q. That is what you relied on, those bills?

A. Yes, sir.

Q. And those are your check marks?

A. Yes, sir.

Mr. Neumann: Same objection last urged by me.

Mr. Tobin: Exception.

Q. Your next item is Real Estate, \$13,103.16; I show you two bills, one for \$13,035 and another one for \$68.73 and ask you whether those are the two bills to which you referred in your Exhibit 65?

A. They are.

Q. As aggregating \$13,103.16?

A. Yes—a 56-cent discount.

1188 Q. Less a discount of 56 cents?

A. Yes.

Q. Those bills were checked by you?

A. Yes.

Q. Indicating that you used them in making up these figures?

A. Yes.

The Master: Do you offer those?

Mr. Ransom: I do.

Mr. Neumann: Same objection.

The Master: Mark those two as one exhibit.

Two sheets marked Complainant's Exhibit No. 94.

Mr. Neumann: Exception.

Q. Now, with reference to the next item, Capital Stock Tax, \$1,298, did you have any memorandum of bills or invoices before you for those items?

A. I had the notice of assessment before me, received by the company from the Federal department.

Q. Was there one, or more?

A. I had two before me.

Q. I show you one, apparently for \$827, and ask you whether that was one of them?

A. This is one of them, it bears my check mark.

Q. That was used by you in arriving at this figure of \$1,298?

A. It was.

Q. Was there another one?

A. There was.

Q. Of similar character?

A. There was.

1189 Q. And checked by you?

A. Checked by me.

Q. For how much was that?

Mr. Neumann: That is objected to as incompetent, irrelevant and immaterial; the paper itself might be proof of that fact but not what the witness states. There is no proof here that it was lost, or anything else.

Q. And there is a similar bill for the difference between \$827 and \$1,298?

A. Yes, \$471.

The Master: This one for \$827 is offered in evidence, is it?

Mr. Ransom: Yes.

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial and incomplete.

The Master: I will take it.

Mr. Neumann: Exception.

Marked Complainant's Exhibit No. 95.

Mr. Ransom: I think the record ought to show that these vouchers which have now been given separate exhibit numbers were previously identified by the witness Spear when he was on the stand and were marked in evidence as part of the 1919 vouchers.

The Master: I understand that to be so but I wanted it clearly on the record, so I gave these separate exhibit numbers.

Mr. Neumann: Now, I take exception to the fact that they are characterized by counsel as having been previously offered in evidence as exhibits in the case and will ask him to show me on the exhibit now offered, No. 92, where the former exhibits number is on this.

1190 The Master: That is a perfectly ridiculous request because counsel knows perfectly well that there was a bundle of vouchers taken in evidence as one exhibit, and whether the mark was put on the wrapper or whether no mark was put on at all, I don't recall, but all of the 1919 bills are marked as one exhibit.

Mr. Neumann: Including any voucher of any kind?

The Master: Yes.

Mr. Neumann: I didn't so understand the offer at the time it was made.

The Master: I so understood it.

Mr. Neumann: It was offered in connection with an exhibit of coal and oil.

The Master: There was a separate bundle of all the 1919 vouchers excluding coal and oil.

By Mr. Neumann:

Q. Now, Mr. Teele, I show you Complainant's Exhibit No. 92, the very last column, there is the word "Arrears?"

The Master: That means that there were some unpaid taxes—what about it?

Mr. Neumann: I want the witness to explain what that word means.

The Master: There is no use wasting time with that.

The Witness: There is nothing in the column.

The Master: And in one of them there was?

The Witness: Oh, yes.

Q. There is the word Arrears there?

A. The word arrears appears there.

1191 Q. What does that mean?

A. Well, it states here—the notation appears on the bill itself—the word "Arrears," if it appears in the space indicated by the arrow, means that previous taxes have not been paid.

Q. I take it from that that the special franchise tax for some years, or probably all years, or one or two years prior to 1919, had not been paid by this company; is that correct?

A. No, my understanding is that only this half year is in arrears.

The Master: What half?

Q. Which half?

A. The second.

The Master: No, it shows how useless this cross-examination of Mr. Teele is.

Mr. Neumann: It shows how useless it was to offer him as a witness—that is what it shows.

The Master: The witness has testified that he has tabulated certain items from the books, that he found certain bills for 1919 for taxes, and he took them in as a liability.

The Witness: They are arrears of taxes.

The Master: As a matter of fact, that bill on its face shows that there is some tax unpaid of the year prior to 1919. It may be a special franchise, it may be a real estate tax, but it has nothing to do with his testimony.

Mr. Neumann: And we had the officers of the company here who could have identified that, and we could have gone into that question; we are deprived of our right to cross examine on that point and put it on the record.

1192 The Master: That is nonsense.

Mr. Neumann: Exception.

The Master: The answer to it all is that Mr. Teele has already testified there are some 1917 franchise taxes now for which he set up an accrual of interest. Are there not?

The Witness: Yes, sir.

Mr. Tobin: We did not so understand that, if the Master please. There were some 1917 taxes which they had not charged on their books. There were not any 1917 taxes which were unpaid, as I recall it.

The Witness: Yes.

Mr. Tobin: They were unpaid, Mr. Teele? I understood they had not been charged on the books.

The Master: You look at the records. They do not accrue taxes on the books, except taxes that are unpaid.

Mr. Tobin: They had to make an entry of it and that is the way they took care of it.

Mr. Chambers: Mr. O'Connor is a short witness, and I suggest that we cross-examine him. Then Mr. Neumann will begin the cross-examination of Mr. Miller, and I will cross-examine for the Attorney General, if that is agreeable to the Master.

Mr. Ransom: I suggest that whoever Mr. Chambers now represents in this case—

Mr. Chambers: I am the solicitor for the defendant Newton, the attorney of record.

Mr. Ransom: You might leave it to the complainant to determine the order of the witnesses.

Mr. Neumann: I think for the saving of time—it is now twenty minutes to one—we could probably get through with Mr. O'Connor by a quarter to one, and we could not with Mr. Miller.

The Master: Is there any point about it?

Mr. Ransom: No, just a preference.

The Master: We will take Mr. O'Connor. Let us get rid of him.

Mr. Ransom: Obviously they are unprepared for him, and they are prepared for Mr. O'Connor.

Mr. Neumann: We will tell you the fact—our engineers will be here in a very few minutes, if you want to know it, you will have it.

Mr. Ransom: I was going to put in some direct examination by Colonel Miller that you might want to think over during lunch.

Mr. Neumann: You are not helping us, so don't you worry.

PATRICK J. O'CONNOR, resumed

Cross-examination.

By Mr. Chambers:

Q. Mr. O'Connor, who retained you to testify in this case?

A. Who what?

Q. Who hired you to testify in this case?

A. Mr. Spear.

Q. And you are charging him by the day, are you, or by the job?

A. By the job.

Q. What did he ask you to do, to go and look at only two buildings?

A. Yes.

1194 Q. Just those two?

A. Yes.

Q. There are a lot of other buildings there which you did not look at; he picked out just the two buildings and limited you to those two?

A. Right.

Q. That is the one where the superintendent lives, is it?

A. Right.

Q. And the general office building?

A. Right.

Q. The place where the superintendent lives is an old house, is it not?

A. Well, comparatively so.

Q. Would you not say it was twenty years old at least?

A. About that, I should think.

Q. And how old would you say the office building was?

A. About the same thing.

Q. About twenty years old?

A. Yes.

Q. It might be older than that?

A. It might be, one way or the other.

Q. And the house might be older than that?

A. It might be but I would not think so. I have no reason to know that.

Q. What did you do, what examination did you make, of the house?

A. Why, I went around the outside; I went up in the house and down in the cellar, just to make a general inspection.

Q. How much time did you spend in looking over that house?

A. Why, possibly half an hour.

1195 Q. Did you know the kind of foundation?

A. Yes.

Q. What?

A. Yes.

Q. What kind of a foundation has it got?

A. Brick.

Q. And the upper part of the house, what material is it made of?

A. Frame.

Q. Frame?

A. Yes.

Q. Shingle roof?

A. Shingle roof.

Q. Did you go through it?

A. Yes, sir.

Q. From the cellar to the top?

A. Yes, sir.

Q. What is its present state of repair?

A. At that time it was fair.

Q. Fair?

A. Yes.

Q. It is twenty years old, you say?

A. Yes.

Q. Are not some parts of it worn out or rotted out?

A. I do not think so.

Q. You did not see any at all?

A. No.

Q. You did not see any part of it that was worn out?

A. I would say the building has been kept in good repair.

Q. You made that decision after looking it over and spending half an hour on the house?

A. Yes.

1196 Q. Were you acquainted with it before that?

A. Yes, sir.

Q. Had you ever made any examination of it before?

A. Yes, sir.

Q. When?

A. I had done repairs there some years before that.

Q. What part of it did you repair?

A. The house.

Q. Shingled it?

A. No, part of it.

Q. Shingled part of it?

A. Yes.

Q. How long ago was that?

A. Four or five years, I guess.

Q. And the shingles on the rest of it?

A. Were in fairly good repair.

Q. You do not know when it was last shingled?

A. I could not say that, no.

Q. You say fifty-six hundred dollars to reproduce that as of January 1, 1920; is that right?

A. No, five thousand six hundred dollars.

The Master: That is what he said, fifty-six hundred.

The Witness: Oh, I thought he said——

Q. To put up a brand-new house that would be?

A. At that time, yes.

Q. New?

A. Yes.

Q. The same kind of a house?

A. Yes.

Q. The same material?

1197 A. Well, as near as you could get to that material. Of course, the material in twenty years would not be just exactly the same, only as we would call stock material at that time.

Q. When was the house last painted?

A. I could not tell you that.

Q. Of course, if you built a new house for fifty-six hundred dollars, or five thousand six hundred dollars, a new one, it would be worth what; would you say three times as much as this one which was twenty years old?

A. No.

Mr. Ransom: That is objected to.

Q. Your new house there for five thousand six hundred dollars, would be worth, would you say, twice as much as this old house?

A. No.

Q. Well, it would be worth some more, would it not?

Mr. Ransom: Objected to.

The Master: I will allow it.

Mr. Ransom: You are getting into a realm that is not within the province of a witness to express an opinion on.

Mr. Chambers: The Master has ruled.

Mr. Ransom: This is a question of what constitutes value for rate purposes; not what constitutes sale value in the market, or what constitutes exchange value, which are very different things.

The Master: I will take it.

Mr. Ransom: Exception.

A. Do you want me to answer?

The Master: How much more would you say this new house would be worth than the old house?

1198 The Witness: Possibly a third.

Q. More?

A. Yes.

Q. So that would make the value of the old house——

The Master: We will figure that; do not waste time on it.

Q. About \$1,700?

Mr. Neumann: About \$1,800.

Q. About \$1,800, whatever it figures?

A. About that. I am not a lightning calculator.

The Master: That is, you think it would make this new house worth that much more than the old one?

Mr. Chambers: Yes.

Mr. Ransom: Make it sell for more.

The Master: Yes.

Q. Your new house was \$5,600?

A. Yes.

Q. You take a third off of that—that is about what you think is the difference between the new house and the old one?

Mr. Ransom: Objected to as incompetent, vague and indefinite.

Q. About a third off of the \$5,600?

A. About, yes.

Q. Your \$5,600 price was based, I suppose, on January, 1920, prices of labor and material?

A. Yes.

Q. They were abnormally high, were they not, then?

A. True.

Q. You never knew them, did you, to be so high?

A. No.

1199 Q. Would you not say they were unreasonably high?

A. Well, that is peculiar, to say unreasonable. They are awfully high, I would say that.

Q. They are abnormal?

The Master: We have had that. Go on.

Mr. Chambers: Let him say.

The Master: You are going to finish with him before one o'clock; now go ahead.

Q. The office building, your figure to reproduce that was \$10,400?

A. Right.

Q. That is made of brick?

A. Yes.

Q. And you considered that was 20 or 25 years old?

The Master: He said about twenty.

Mr. Chambers: No, he said twenty or twenty-five before.

The Master: Did you, Mr. O'Connor?

Mr. Chambers: Yes, I have it right here.

The Witness: As I recall it. Well, I don't know, in the neighborhood of twenty years, more or less.

Q. (Reading:) "Q. How old a building was it?"

A. Why, offhand I would say twenty or twenty-five." How much of an examination did you make of that building?

A. Practically the same thing.

Q. Half an hour?

A. Half an hour.

Q. Did you know what its foundation was made of?

A. Yes.

Q. What?

A. Brick.

1200 Q. And the whole building is brick?

A. The whole building.

Q. What kind of a roof?

A. A flat roof, tin roof.

The Master: There is a little frame extension on that?

The Witness: Yes on one end.

Q. And that would be a new building you would produce for \$10,400?

A. Yes.

Q. Brand new?

A. Yes.

Q. How much would you say that new building would be worth more than the present building that is there, considering the present one is twenty or twenty-five years old?

Mr. Ransom: Objected to, not a question within the province of the witness to decide, applying a standard which has no bearing on a rate case; vague and indefinite.

The Master: Overruled.

Mr. Ransom: Exception.

A. That would be in my judgment about the same as the other it would be about a third.

Q. That is, the new building would be worth about a third more than the one you found there?

A. Yes.

Q. Is that not pretty low, now, a third, would it not be worth say, half as much again?

A. I would not think so.

Q. These buildings do wear out, do they not; they deteriorate, do they not with age?

A. They deteriorate, yes.

Q. And in time, why, they would rot or deteriorate so they would not be any good at all; isn't that so?

1201 A. I would not say that.

Q. You would not go as far as to say that?

The Master: It depends on how a building is cared for as to how long it will last. If you take care of a building properly it will last fifty or sixty years.

The Witness: And longer than that, too.

Q. The price of materials that would be used in rebuilding the office building, those are very high now?

A. They are.

Q. You took into consideration the high prices?

A. I had to.

Q. In your reproduction cost?

A. Yes.

Q. Brick is very high?

A. Very high.

Q. Abnormally high, is it not?

A. They are very high.

Q. Would you not say that the prices of the materials that would go into that building are abnormal?

Mr. Ransom: Objected to. The question whether it is abnormal or normal is not within the province of this witness to decide. has lasted for a long time and it is getting higher.

The Master: I think I will sustain that objection. I think you can bring out from Mr. O'Connor is that the prices are very high, that they are higher than they have been for many years.

Mr. Chambers: Exception to the refusal to take the answer.

Q. Did you ever know them to be any higher in your experience as a builder?

1202 A. No.

Q. That is true of wages, is it not?

A. True.

Q. Are you doing any work now, doing any building?

A. Yes.

Q. What kind of building are you engaged in now?

A. Alterations and repairs.

Q. Any new buildings?

A. No.

Q. Just alterations and repairs?

A. Yes.

Q. How much of a force have you?

A. At the present time six men.

Q. Six men working for you continuously?

A. Yes.

Q. You take contracts and these men work for you?

A. Well, we do not take contracts now; we cannot.

Q. Do you work by the job?

A. No, on a percentage basis.

Q. By the day? Percentage?

A. Yes.

Q. Cost plus 15 per cent?

A. No, we do not get 15 per cent; 10 per cent.

Q. 10 per cent?

A. Yes.

Q. Is that a fair profit, 10 per cent.?

A. Fair, yes.

Q. You are satisfied with that. You have taken it?

A. Yes.

Q. How does that cost of repairs compare with prior years, say before the war?

1203 A. Well, of course they would be higher. Of course, material is high, so is labor.

Q. Your men are union men, are they?

A. Yes, sir.

Q. And you run a union shop?

Mr. Ransom: Objected to as incompetent and ridiculous.

The Master: What has that got to do with this case?

Mr. Chambers: I want to see if he is paying union wages.

The Master: He is paying the wages that he has got to pay to get men to work.

Mr. Ransom: He is probably paying much higher than union wages.

The Master: The point of the thing now is not how much you pay, but how much work you can get out of a man.

The Witness: And you do not get much.

The Master: No, I know it.

Q. Was there a time recently when you did not do any work at all to amount to anything, on account of the high prices?

A. No.

Q. There was not any such time?

A. No.

Q. Can you get material now, lumber, brick and so on?

A. You can get it, yes.

Q. Have you any trouble in getting it?

A. Sometimes we have little delays.

Q. Are you interested in any way in this company's property?

A. No way.

Q. No way at all?

A. No.

1204 Q. Nor in the company?

A. No, sir.

Q. The delay in getting material is due to transportation, is it, largely?

The Master: What is this all, a matter of personal interest, or does it bear on this case? I do not see how it makes a bit of difference to this issue whether there is a delay or there is not a delay. Mr. O'Connor has figured in his opinion what these buildings would cost to reproduce, he has given you his estimate of their value compared with the old buildings. What difference does it make whether there is a delay in getting lumber or plumbing material, or whether they are union or non-union? How does that help us? If you are interested in these things, Mr. O'Connor will undoubtedly spend a few minutes with you outside and tell you all about it.

Mr. Chambers: That is all.

Cross-examination

By Mr. Neumann

Q. Mr. O'Connor, did you inquire as to the age of this building?

A. No, sir.

The Master: Objection sustained, already covered.

Q. Did you inquire as to the original cost of this building?

A. No, sir.

Q. Did you take into consideration in arriving at a figure as to the value of this building that the company's business might
1205 outgrow this building, and thereby the building become inadequate, entirely apart and separate from wear and tear?

Mr. Ransom: Objected to as vague and meaningless.

The Master: No, it is not vague and meaningless, but I do not think it has the slightest thing to do with Mr. O'Connor's testimony. Let him answer it, though.

A. I had no reason to.

The Master: He simply testified to what it would cost to reproduce brick buildings; that is all he testified to.

Mr. Neumann: That is all.

Redirect examination.

By Mr. Ransom:

Q. Mr. O'Connor, is the cost of doing work or the construction of buildings of this sort higher or lower now than it was in January, 1920?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial.

The Master: The question is allowed.

Mr. Neumann: Exception.

A. Still higher now.

Q. How much higher, would you say, now than on January 1st, 1920?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial.

The Master: Overruled.

Mr. Neumann: Exception.

A. Why, from 5 to 8 per cent.

The Master: Both as to material and labor?

The Witness: Material and labor.

Q. Have you recently built and sold several houses?

1206 A. I have sold one.

Q. Have you recently built several?

A. Well, last year I built three, three new houses.

The Master: Where, over in the Flushing district?

The Witness: The Flushing district.

Q. And you recently built one and sold it?

A. Yes, just sold it on Monday.

Mr. Ransom: That is all.

The Master: Anything else?

Recross-examination.

By Mr. Neumann:

Q. What were carpenters' wages on January 1st, 1920?

A. What is that?

Q. Carpenters' wages.

A. Why, they went from \$8 to \$9 on January 1st—no, rather from \$7.50 to \$8, and May 1st they went to \$9.

Q. That is the union scale?

A. The union scale.

Q. Provided for in the union rules?

A. Yes.

Mr. Neumann: That is all.

Mr. Ransom: That is 16 per cent.

1207 ALTEN S. MILLER resumed.

Direct examination.

By Mr. Ransom (continued):

Q. Colonel Miller, on page 699 and following of the record you have already given your estimate of the total cost of reproduction of the complainant's plant and property up to the point where the same was ready to begin the distribution of gas?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial and already fully covered.

The Master: Overruled.

Mr. Neumann: Exception.

A. Beginning manufacture and distribution, yes.

Q. Does such a sum represent all of the expenditures which it is necessary to make in order to reproduce a company with its business attached, as a going concern?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, all fully covered by the exhibit, or supposed to be.

The Master: Overruled.

Mr. Neumann: Exception.

A. No.

Q. What additional elements of cost are incurred in the organizing and developing of an enterprise such as a gas company?

Mr. Neumann: Same objection.

The Master: Overruled.

Mr. Neumann: Exception.

A. Starting with a complete plant, not operating, it is necessary to organize first the operating force, and second to organize
1208 the manufacturing plant. No manufacturing plant is ever created finished. There are no two exactly alike——

Mr. Neumann: May I ask this, before the witness is allowed to testify any further—upon what theory this evidence is introduced in the record? Is it for going value?

The Master: I do not know; it is additional direct testimony.

Mr. Neumann: I think we ought to have an expression from the counsel as to what his purpose is in introducing this evidence at this late day.

The Master: No, I will not require it. Finish your answer, Colonel Miller.

Mr. Neumann: Exception.

A. (Continued:) No two gas plants are exactly alike, and in designing them on paper and building them it is found after operation commences that changes will contribute to facility of operation and to economy. When the plant is revalued these changes, of course, do not show, and therefore have not been included. Also in securing business it is necessary to canvass, to advertise, and in order to secure it rapidly it is necessary to make special inducements. If it is allowed to grow up slowly over a long period, then special inducements are not necessary, but under those conditions, with the plant—

Mr. Neumann: One moment, Colonel Miller. I move to strike the witness' answer out upon the ground that it presupposes a set of facts that are not in existence in this case; they are hypotheses, and it is not responsive to the question that was asked.

The Master: I will deny the motion.

209 Mr. Neumann: Exception.

Mr. Tobin: If the Master please, I think there is a further objection, a good objection.

The Master: You do not think Mr. Neumann's was good, then?

Mr. Tobin: Well, there is a further objection.

Mr. Neuman: He said a further good objection.

The Master: He said a good objection.

Mr. Tobin: You cannot twist my words that way. I said there was a further objection, that this witness is not qualified to speak as to the commercial end of the gas business.

The Master: I will deny the motion. Mr. Tobin: Exception.

The Master: My criticism of it is that it is rather too much of a speech in answer to that one question.

Mr. Neumann: Then why is it that the objection it is not responsive is not a good one?

The Master: But it does not appeal to me, because another question makes it responsive.

Q. In the first place, Colonel Miller, with respect to the plant, there is an expense of organizing the personnel of a working force?

A. Yes.

Q. And is the cost of that greater or less than the cost of the working force under ordinary operation conditions?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, nothing bearing on the issues in this case.

A. There is no cost of organizing.

210 The Master: I will overrule it.

Mr. Neumann: Exception.

Q. I mean during this preliminary stage is there a greater cost as the force is organized and settles down?

Mr. Neumann: Objected to as incompetent, irrelevant and immaterial.

The Master: Overruled.

Mr. Neumann: Not material to the issues in this case. Exception.

A. I take it you mean there is a greater cost of operation due to the greenness of the force. Yes, there is.

Mr. Neumann: You see, counsel does not even know what he is trying to introduce.

The Master: That is all right.

Q. With respect to the physical plant are there things that have to be readjusted and replaced that are not reflected in the present inventory?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, presupposes a set of facts that are not in existence or proven here.

The Master: Overruled.

Mr. Neumann: Exception

A. Yes.

Q. Now will you state what you were interrupted saying with respect to the development of the business, the commercial side?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, and no proof here that the witness was interrupted. He evidently finished his answer in full, and it is immaterial to the issues here.

1211 The Master: Overruled.

Mr. Neumann: Exception.

A. The estimate of value is based on the completion of the plant and of the mains before the beginning of business.

Q. In your opinion is a plant that has been completely constructed, ready to commence operation but with no customers, of greater or less value than the same plant in operation as a going concern supplying gas to its customers?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, based on a supposition, based on opinion, and not within the province of this witness so to testify; it presupposes a set of facts which have not been proven as yet in this case.

The Master: Overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

A. Assuming that the rate is sufficient to bring a proper return—

Mr. Neumann: One moment. Before the witness goes any further I move to strike it out.

Mr. Ransom: Let him for once finish an answer.

Mr. Neumann: No, you cannot get in on this record any such thing.

Mr. Ransom: Courtesy should be extended, even by representatives of public officers.

Mr. Neumann: Yes, and I am giving you the kind you do.

The Master: Judge Ransom's question excludes any other suppositions, other than those contained in the question. The question of Judge Ransom calls for the witness' statement as to whether a concern that is actually making and distributing gas, a plant, a manufacturing and distributing plant, as such, as a going concern—that is practically what it means—is worth more than a plant that has just been constructed and before it starts to do any business.

Mr. Neumann: Does your Honor want to read 210 New York before you get any further?

The Master: No, not just now.

The Witness: That cannot be answered without consideration of the rate.

Q. Assuming there is permitted the charging of a rate yielding a fair return, would you say that a plant completely constructed, ready to commence making gas but having no customers, is of greater or less value than the same plant in operation, supplying gas to its customers?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, and upon all the grounds urged as to the last question.

The Master: Overruled.

Mr. Neumann: Exception.

Mr. Tobin: If your Honor please, the form of the question is the same as the last one; it is not any different.

The Master: No, there is included an additional element.

Mr. Tobin: He is just putting a conclusion into the mouth of the witness.

The Master: No, it presupposes a fair return.

Mr. Neumann: Here is the vice of this question: This is supposed to be on an hypothesis. If I know anything about the law with reference to hypothetical questions they must be based upon facts that are proven in the case.

The Master: Overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

The Master: Presupposing now a fair rate of return, is a going plant worth more than a plant before the customers are obtained?

The Witness: It is worth more, yes.

Mr. Neumann: I move to strike the answer out.

The Master: Motion denied.

Mr. Neumann: Exception.

The Master: Suppose the rate of return allowed by statute is inadequate, what would you say?

Mr. Tobin: If your Honor please, I do not think you ought to go into that on this record.

Mr. Neumann: I object. If the Master wants to read the opinion in the Court of Appeals, in Kings County Lighting Company vs.

Willcox, 210 N. Y., at page 433, there is the citation (handing Master).

The Master: No. How about an inadequate return being allowed—what would you say?

Mr. Neumann: Same objection.

The Master: Overruled.

Mr. Neumann: Exception.

The Witness: If there is an inadequate return and no prospect of an inadequate return—

1214 The Master: It is a liability and not an asset?

The Witness: It is a liability instead of an asset.

The Master: Next question.

Q. How would you measure the difference in value between a plant ready for business and without customers and one in operation as a going concern with customers?

The Master: With a fair rate of return.

Mr. Ransom: Yes.

Mr. Neumann: I object to it on the ground it is incompetent, irrelevant and immaterial and on all the grounds last urged.

The Master: Overruled.

Mr. Tobin: If your Honor please, you have got before you a case which has to do with a going concern. You have not got any mysterious subject here that you are going to compute a rate for.

The Master: Counsel may as well get this clear. I am going to take this line of testimony. I am predisposed against making any finding based on it, but I am going to take it. Make your record, state your objections and let us get done with it.

Mr. Neumann: Yes, and I want to say right here that the manifest unfairness of it is in this, that it is no criterion, because a large plant might be different than a small plant.

The Master: All right, I will let you bring it out on cross examination for what it is worth. I will take it.

Mr. Ransom: If you wish to argue that question, the Illinois Supreme Court a few days ago, for example, reversed the
1215 Illinois Commission for failing to allow for this.

The Master: I will take that up a little later, when I come to the consideration of the evidence.

Mr. Ransom: There is something in this Kings County Lighting case which indicates clearly these elements that Col. Miller testified to must be taken into account.

Mr. Neumann: In 210 N. Y.?

Mr. Ransom: Yes.

Mr. Neumann: You know that is not true.

The Master: And you know, Mr. Neumann, there is no sense in continuing this discussion.

Q. What is your answer to the last question?

Mr. Neumann: That is subject to the same objection and exception, if your Honor please.

The Master: Yes, same objection, ruling and exception.

A. What is the question?

Q. How would you measure the difference in value between a plant ready for business and without customers and one in operation as a going concern with customers?

A. By the cost of securing the business under intensive conditions.

Mr. Neumann: I move to strike the witness' answer out as not responsive to the question.

The Master: Motion denied.

Mr. Neumann: Exception.

Q. How long a period, in your opinion, would be required in the case of the complainant gas company by means of intensive work to attach the present business of the company?

Mr. Tobin: Your Honor, I do not think that should be allowed.
Mr. Neumann: That is objected to on the ground it is incompetent, irrelevant and immaterial.

Mr. Tobin: That is about as wild as you can hit.

Mr. Neumann: It is clearly contrary to the proven facts in this case, too indefinite, vague, meaningless, and has no application to the present company at all: it is based on pure hypothesis and opinion.

Mr. Ransom: We have shown that this witness has had a very considerable experience in that respect, and we have shown that this witness has had a very large and long knowledge of these Flushing conditions. He has lived in Flushing.

Mr. Chambers: I think you have shown this witness is incompetent.

Mr. Ransom: He ran a gas company in Flushing for a great many years. He was a resident of Flushing.

The Master: Is there an unanswered question?

Mr. Ransom: There is.

Mr. Neumann: There is an objection that you have not ruled on.

The Master: Overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

A. Read the question, please.

Q. How long a period, in your opinion, would be required in the case of the complainant gas company by means of intensive work to attach the present business of the company?

A. Two to three years.

Mr. Neumann: I move to strike the witness' answer out.

The Master: Overruled.

Mr. Neumann: Exception.

Mr. Tobin: I do not understand what he means by the word "attach." Did you say attach, Mr. Ransom?

Mr. Ransom: Yes.

Q. Have you made an estimate, Col. Miller, of the probable cost of attaching the business of this company, assuming it were to start business as a new concern?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial. The term "attach" does not mean anything. It is vague, meaningless, indefinite, based on hypothesis and opinion.

The Master: Overruled.

Mr. Neumann: Exception.

A. Yes.

Q. What is your estimate?

Mr. Neumann: That is objected to upon the same grounds.

Mr. Cummings: We must first show that he has got the actual figures from the books and built it up.

The Master: Overruled.

Mr. Neumann: Exception.

A. Between \$525,000 and \$550,000.

Mr. Ransom: The defendants may cross-examine.

Mr. Neumann: I move to strike out the witness' answer.
1218 The Master: Motion denied. You will cross-examine at 2 o'clock.

Mr. Chambers: I move to strike it out as being incompetent, improper, irrelevant, suppositious, worthless, hearsay.

Mr. Ransom: We have gone back to having three representatives of the Attorney General on one witness.

Mr. Chambers: The trouble is you take this testimony of the witness and then when it gets cold you consider it.

Mr. Neumann: Then you compel us to go into a cross-examination and limit our cross-examination.

Recess.

Afternoon Session.

ALTEN S. MILLER, resumed:

Cross-examination.

By Mr. Neumann:

Q. Mr. Miller, have you at any time in the past purchased or sold any equipment entering into the property of a gas plant?

A. Yes.

Q. When? I mean you actually, not your firm?

A. Personally?

Q. Yes.

A. Yes. I purchased a large part of all the apparatus that went into the Ravenswood plant of the New Amsterdam Gas Company. I purchased all of the apparatus that went into the plant of the

Consolidated Gas Company of Baltimore. I sold apparatus
1219 to several companies when I was Western sales agent of the
United Gas Improvement Company, or manager of the Na-
tional Gas Light & Fuel Company of Chicago.

Q. When you use the word "apparatus" what do you mean by that?

A. In the case of the East River Gas Company of Long Island City, afterwards the New Amsterdam Gas Company, I mean everything that went into the plant, I mean all the material for setting meters, I mean the meters, all the material for services, and all the material for mains; in other words, everything that goes to make up the plant of a gas company. That includes buildings.

Q. How many years have you been actually identified in placing valuations upon utilities properties?

A. Between eleven and twelve years; that is, for the purpose of rate making, ten or eleven years; for the purpose of purchase and sale, a period of between twenty-five and thirty years.

Q. Now, will you mention some of the cases in which you testified for the purpose of rate-making?

A. Yes. In the case of the rate of the United Electric Light & Power Company of St. Louis. In the case of the Paterson and Passaic Gas Light Company. In the case of the Haverhill Gas Company of Massachusetts. In the case of the Kings County Lighting Company. In the case of the Newtown Gas Company.

By Mr. Ransom:

Q. That is in the Borough of Queens?

A. In the Borough of Queens, yes.

By Mr. Neumann:

Q. Was that a matter pending before the Public Service Commission?

1220 A. It was.

Q. What other cases?

A. The case of the Washington Gas Light Company.

Q. Was that before Judge Gould?

A. No, that was a commission case. In the case of the Consolidated Gas Company of New York. I do not at the moment recall others.

Q. Now, in all these cases that you have mentioned in whose behalf did you testify?

A. In every case representing the company.

Q. Never for the public or for the public officials defendants?

A. I think in every case I testified for the public, yes; I considered I was testifying for the public when I testified for the company.

Q. That is your interpretation of it, is it?

A. It is, yes.

Q. And you have never testified for any of the defendants, you have always testified for the complainant?

A. The defendants—

Q. Answer that yes or no.

Mr. Ransom: By the defendants do you mean the public authorities, because often the company is the defendant?

Mr. Neumann: I mean the public authorities.

A. I have never been asked by the public authorities.

Q. And you have never testified?

A. No.

Q. Have you ever offered yourself?

A. I never have to anybody, the companies or the public.

Q. Now, you have testified that you began this work about
1221 fifteen months prior to the date that you first testified in the instant case—by the way, before that question, this is the third appearance on the stand in behalf of the complainant in this case?

The Master: Well, the record shows that, don't bother with that.

A. I am not sure whether it was the second or third.

Q. You testified on your first appearance that you began the work about fifteen months prior to the time you first testified—is that correct?

A. Yes.

Q. Then you testified that you finished the work within six or eight weeks—is that correct?

A. Yes.

Q. Just explain what you meant that you began fifteen months ago and finished within six or eight weeks?

A. Yes. It meant that when the work was started I went to Flushing, made an examination of the plant, examined the records of the distributing system, examined the books and got as broad and as large a picture as I could of the whole situation. I then sent for a staff of engineers, put them in charge, or rather put them on the main records, the meter records, the service records, the books of the company, and in the plant made a complete appraisal of all the property of the company.

The Master: May I interrupt a minute to get something off my mind, Mr. Neumann?

Mr. Neumann: Certainly.

By the Master:

Q. Mr. Miller, as I understand it, your testimony is that including the land, which you did not appraise, and including these
1222 two buildings that O'Connor appraised, and including the working capital of \$165,000, you figure the reproduction cost to be \$2,907,000—is that the idea?

A. That is the idea.

Q. As of January 1, 1920?

A. Yes.

Mr. Ransom: And exclusive of going value?

The Master: Exclusive of going value, except that I should imagine some of these items, like engineering during construction, and so on, to some extent include going value.

Mr. Ransom: No. The overhead and reproduction cost that Mr. Miller has stated are the costs up to the completion of the plant ready for beginning operations. Now, going value does not relate to anything up to that time. Going value is something from the time the plant is ready to begin making gas and supplying it to consumers.

Q. You say this excludes going value?

A. Yes, sir.

Q. This is of January 1, 1920?

A. Yes, sir.

Q. I want to know from you what in your opinion these same items would represent as an average during the years between 1904 and 1914?

Mr. Neumann: Just one moment, please. That is objected to on the ground that it is incompetent, irrelevant and immaterial, for this particular reason: We went before Judge Mayer on this question, asking for a bill of particulars, so we could prepare ourselves on that very question, but counsel stated that he did not intend to offer that on the record. Our order directing a bill of particulars 1223 directs him to give that information if he intends to produce that evidence.

The Master: I can't help that; I am going to decide this fact.

Mr. Ransom: I did give you a bill of particulars.

Mr. Neumann: No, you did not.

Mr. Ransom: I did; I gave you everything Judge Mayer asked for.

The Master: State your objection on the record.

Mr. Neumann: It is manifestly unfair to the defendants to open up this line of questions, introduce this line of testimony, without our having been given an opportunity and the data beforehand in order to prepare for it.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

Q. Now, what do you say?

A. That item of taxes during construction, and working capital would not be changed. The balance would be about one-half, excluding land. I don't know what the land would have been, but, leaving out land, taxes during construction and working capital, the plant would be about one-half of the figures that I have here.

Mr. Neumann: I move to strike out the answer of the witness.

The Master: Motion denied.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

Mr. Ransom: I think the record ought to show that the complainant does not in any way acquiesce in any such basis of computation, or even that it has any proper bearing on this case 1224 whatever.

Mr. Neumann: Why didn't you object when the question was asked?

Q. You say the taxes would not be changed?

A. No, sir.

Q. And the land would not be changed?

A. In so far as I know; I don't know the value of land.

Q. You don't say one way or the other?

A. No.

Q. Working capital: I am taking that out, too.

A. Yes.

Q. You said that should be taken out?

A. Yes.

Q. What else do you say ought to be taken out?

A. That is all.

Q. Taking out land, taxes and working capital makes a reduction of \$220,345 from \$2,907,062. I figure the balance to be \$2,786,771. Taking half of that and adding again the \$220,345 gives me \$1,563,703.

A. Yes.

Q. That you say is your opinion as to what all of these items would represent, assuming the land value not to have been changed during the years, on the average, from 1904 to 1914?

Mr. Neumann: I object to that on the ground that it is incompetent, irrelevant and immaterial.

Mr. Ransom: And that is exclusive of franchises and rights and exclusive of going value.

The Master: It only includes the items specified here.

Mr. Neumann: I must object to counsel putting something in the question that the Master's question did not contain.

1225 The Master: Do I understand that correctly, Mr. Miller?

A. Yes.

Mr. Neumann: Exception.

The Master: That is exclusive of franchise rights and going value. What proof is there in the record as to going value, the amount?

Mr. Ransom: \$525,000 to \$550,000?

The Master: What proof is there in the record as to the franchise?

Mr. Ransom: The books.

The Master: Only that?

Mr. Ransom: So far, and the franchise documents.

Mr. Neumann: What do the franchise documents show, the price?

Mr. Ransom: They speak for themselves.

Mr. Tobin: They show nothing.

The Master: Mark for identification the Bill of Particulars, so called, furnished to the defendants pursuant to the order of Judge Mayer.

Mr. Ransom: Entitled "Detail Statement of the Cost of the Plant, Distribution System, et cetera, of the New York & Queens Gas Company to and including December 31, 1919."

Bill of Particulars marked Complainant's Exhibit 96 for Identification.

The Master: Your complaint alleges a value of \$1,492,976, "Exclusive of some other intangible assets of great value."

Mr. Ransom: Yes.

The Master: Do you rely on that figure?

Mr. Ransom: We stand on the figures that we have here proved.

1226 The Complaint was drawn on an investment basis, and not a present-cost basis.

Mr. Tobin: We ask that that should not be put in the record, if your Honor please. The complaint speaks for itself.

Mr. Ransom: We had no appraisal at that time, and alleged the company's book investment.

Mr. Neumann: I move to strike from the record the witness Ransom's definition of what going value is.

The Master: Motion denied.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

By Mr. Neumann:

Q. Were you finished with the answer to the last question when the Master interrupted you, or was there anything else you wanted to say?

The Master: I want to ask another question.

By the Master:

Q. Mr. Miller, you say that the value of the manufacturing and distributing plant of the character of that of this complainant, in the territory served by this complainant—would you say that it was more or less per thousand cubic feet than a similar plant on Manhattan Island serving a densely populated territory?

Mr. Neumann: I object to that on the ground that it is incompetent, irrelevant and immaterial and not the proper way of proving it, and from a witness not qualified to testify upon that particular subject.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

1227 A. More, considerably more.

Q. By considerably more, how much more would you say?

Mr. Neumann: I make the same objection.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

A. I have not made a direct comparison, but from my knowledge of companies about this size I should say probably 50 per cent. A small plant is much more expensive per unit than a large plant, and the customers are much more widely scattered; I mean they are less per mile of main. On the other hand, of course, that is in some degree counteracted by the fact that it costs very much more to lay

a main in a thickly built up territory, where there are many underground obstructions, than it does to lay mains in a scattered territory.

Q. Would you be able to give me an answer to this question: Assuming merely for the purpose of illustration that a manufacturing and distributing plant on Manhattan Island, fairly valued in pre-war periods, throughout the years, would be about \$4 per 1,000 cubic feet, what would that represent in the case of this company's plant and distributing system?

Mr. Neumann: I object to that on the ground that it is incompetent, irrelevant and immaterial, and not from a qualified witness, and no foundation having been laid for it.

The Master: Objection overruled.

The Witness: Yes, I could do that. In the case of the Paterson & Passaic Company, it was somewhat similar——

1228 Mr. Neumann: Now, before the witness goes any further, I move to strike the answer out.

Mr. Ransom: Let us hear it before you move to strike it out.

Mr. Neumann: What he has already said indicates that there are different conditions.

The Master: Motion denied.

Mr. Neumann: Exception.

The Witness: Paterson & Passaic was somewhat similar, although the territory was a little more closely built up. The value found was \$5.

The Master: I don't care what the value found was. I am asking you if you can give me an expert opinion as to what you would say from your knowledge of this and other plants, that its value per 1,000 cubic feet is as a manufacturing and distributing system throughout the years prior to 1917.

Mr. Neumann: I make the same objection as last urged.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

The Master: What would you say it was?

The Witness: I did not mean right away. I can't tell you off-hand. I thought you meant whether I could fix it up or not.

The Master: I was wondering whether you could tell me now.

The Witness: I could not offhand; I have not the figures.

Q. Why not, Mr. Miller?

A. I simply have not made the figures up.

1229 The Master: Did you value the Passaic plant at all?

The Witness: No, I did not value the plant. I tested on the going value there, made an estimate of the going value.

The Master: All right, go ahead.

Q. Now, had you finished your answer to the last question prior to the Court taking up some questions?

The Master: Yes, he had finished it, because I asked you if I could interrupt before you asked another question. You can always as-

sume when I break in that there is an answer to the previous question, because I refrain from breaking in until that happens.

Q. Now, Mr. Miller, how much time did you actually spend at this plant yourself?

A. I cannot give it to you exactly. I was there a great many days, but I could not say the exact time. I am pretty familiar with all of this company and its territory, and it did not require a very large amount of time, but I did spend—I was there on a great many days, different days.

Q. Did you keep any record of your time?

A. No.

Q. Do you know when you commenced?

A. I stated that it was about 15 months previous to the first date on which I testified in this case, but I don't remember the exact date.

Q. You said you spent about six or eight weeks at it?

A. I think I said I spent about 15 months.

Q. That is what I am trying to get clear. You said you started about 15 months ago?

1230 A. Oh, it would be 15 months less about six weeks.

Q. In other words, you started about 15 months prior to the date you testified?

The Master: That is what he said.

Q. And you concluded the work about six or eight weeks prior to the date you testified, is that correct?

A. Yes.

Q. When did you actually first make an inspection of the plant?

A. At the time that I started the work.

Q. Do you know how much time you then spent without interruption?

A. Approximately half a day.

Q. Do you recall when you next took it up, generally speaking, after what space of time?

A. No, I stayed on it for some days at that time, looking over it and getting my crew together, and getting the work started. Then I kept it up from that time on.

Q. You personally?

A. I was personally in touch with the work. I do not mean that I spent all the time either in Flushing or in the plant, but I went there from time to time.

Q. What did you mean by the statement that you kept personally in touch with the work?

A. I meant that I knew what every man was doing all the time; I knew by correspondence and by visits and by looking over the records that were being accumulated, and I advised with them and instructed them.

Q. How many men did you actually have employed—how many men were actually employed by you in the performance of this work?

1231 A. Not including stenographers, some ten or twelve.

Q. Will you name them and name the different classifications?

A. I cannot name them all offhand; I have a list of them here.

Q. Can you by referring to that list refresh your recollection?

A. Yes.

Q. Will you please do so?

A. E. H. Matthews was originally in charge under me. He is a mechanical engineer who has spent a great deal of his time in gas plants.

Mr. Neumann: I move to strike out that he has spent a great deal of his time in gas plants.

The Master: Motion denied.

Mr. Neumann: Exception.

Q. I just asked you for their names and designations.

A. What do you mean by designation?

Q. Whatever their title is, statisticians, engineers, or whatever they were?

R. E. Haskins, Engineer.

E. A. Gross, Clerk.

William Graham, Engineer.

Hans Weiss, Constructing Engineer.

L. Green, Constructing Engineer.

G. F. Bolgiano, Constructing Engineer.

W. H. Wise, Clerk.

H. G. Maser, Engineer.

Mr. Wilmer whose initials I have forgotten, Engineer.

Mr. Rossi, whose initials I haven't got, Building Expert.

Those are all my regular men.

1232 The Master: Paragraph 7 of the complaint alleges that the said stock of \$600,000, and some of the said bonds, \$816,000, were duly issued in payment for the reasonable value of the plant and franchise purchased by your orator. As I understand it, no proof was submitted in support of that allegation.

Mr. Ransom: We have not regarded it as any part of the complainant's direct case to prove the cost of this property to this company. We are standing upon our proofs of present value, as we did in the Consolidated case.

Mr. Tobin: You mean the company's present value?

Mr. Ransom: The present value of the present property.

Mr. Neumann: Reproduction cost as of 1920?

Mr. Tobin: He means present value of December 31, 1919.

Mr. Neumann: Do you mean reproduction cost of 1920? For once be straight in what you say.

Mr. Ransom: I mean present value as of January 1, 1920.

Mr. Neumann: What do you mean by present value?

The Master: He has answered it.

Mr. Neumann: I think the record ought to state clearly whether he means reproduction cost as of 1920—

The Master: I think the record sufficiently shows it. Go ahead.

Q. Were these men continuously employed by you?

1233 A. No, all of them were not. Rossi was employed only temporarily.

Q. For how long a period?

A. He was employed for three or four weeks. The other men—Matthews has left the employ of my company. He had been with us several years, but his health was not particularly good, and he left when this work was about half finished. I am not sure,—the other men were drawn from different departments of the Bartlett-Hayward Company, and I am not sure whether the rest of them are all with the company now or not. I am under the impression that they are. Some of them I know are.

Q. This is part of the staff of the Bartlett-Hayward Company, is it not?

A. Yes.

Q. Were they continuously and exclusively employed upon this matter of the New York & Queens Gas Company during these times that you have testified to?

A. All of them were not, no, and I don't know that any of them was exclusively employed during the whole period. Matthews was exclusively employed, and Wilmer was exclusively employed during a large part of the work, that is, something over one half of the work. Graham I think came in then and took Matthews' position and finished it up.

Q. Summing up the whole situation, Mr. Miller, how many man days would you say were spent by your staff exclusive of yourself, upon the inventorying of the property of the New York & Queens Gas Company?

A. Probably 250, 300, maybe double that.

1234 Q. And that wide variance is about as close a figure as you can give?

A. That is probably low—probably 750.

Q. Is that about as good a figure as you can give?

A. That is as good as I can give; the bill was between \$15,000 and \$20,000 for the work done, and those men would not average certainly over \$15 a day. That is the way I got at it, I worked at it backwards.

Q. While you were testifying here?

A. Yes, sir.

Q. From data you had before you?

A. No, I remembered the bill—

Q. You remember the amount that was paid?

A. Yes.

Q. Mr. Miller, at page 171 of the stenographer's minutes, you testified that you checked up all the figures; do you recall that?

A. I don't recollect it particularly, but I did.

Q. Well, now, I read the particular question and the answer, reading from stenographer's minutes, page 171, fol. 513:

"Q Did you personally go over all the work?"

"A I did, and checked all the figures."

Do you recall that question and that answer?

A. No, I don't recall the question and answer, but I say I did do it.

Q Don't you recall testifying to that?

A. I don't recall that particularly, but I have no doubt I did because I did checks the figures, checked all the figures.

Q Just tell us what you did?

A. You mean on the whole appraisal, the whole history of this appraisal, now?

1235 Q Well, what did you mean when you said you checked all the figures?

A. I went into the plant with measurements that my men had made of the plant, showing the location of the buildings, showing the dimensions of the buildings, showing the dimensions of the apparatus and the locations of the apparatus; I took rules and tapes and I had two men with me. Two of the men would stretch the tape; I had a sketch before me and I checked the dimensions.

Similarly with rules, I checked the dimensions that I could check with a rule, checking the figures back and then taking them to the office, and the calculations of quantities that had been made were checked by me for accuracy.

The quantities to which prices were affixed were shown in a book or on sheets, as the case might be—they were checked by me for accuracy.

Q. What sheets have you reference to?

A. Let me finish, please.

Q. All right.

A. These were assembled in a book and added to produce a total, and the total was checked by me for accuracy—many of the figures I made myself.

Q. What books did you have reference to when you used that wording in your answer?

A. In connection with this work our men filled a very great number of note books and of loose sheets—and I refer to the books and loose sheets as well as to the typewritten copies of the exhibit showing the inventory here in evidence—I don't remember the exhibit number.

Mr. Ransom: 66 for identification.

1236 Q. You didn't mean the books of account of this company, did you, when you used that word "books?"

A. I did go over the books of account of the company.

Q. That was not my question?

A. I did go over the books of account of the company.

Q. One moment——

Mr. Neumann: I move to strike that answer out.

Q. It is a very plain question: By the word "books" in your answer you did not mean the books of the company?

A. No.

Q. That is your answer?

A. One moment. I did mean the main book and the service book of the company, I did not mean the books of account of the company.

Q. The only book you had reference to in connection with your answer was the main and service book of this company?

A. Yes.

Mr. Neumann: Will the Complainant's counsel produce Exhibit No. 70?

Mr. Ransom: Produced (handing book to counsel).

Q. Is it fair to say of your testimony, Mr. Miller, that you checked each and every individual computation of cost?

A. Read that question again, please?

Q. (Read).

A. I checked each and every individual computation of cost shown in Exhibit No. 66 for Identification.

1237 Q. That is, personally?

A. Personally.

Q. How about the bills sustaining the figures, did you check those?

A. I checked those.

Q. Also personally?

A. Personally.

Q. Now, you stated that you obtained the mains and services from the company's books?

A. The number of services and the length of main—and the length of services, yes.

Q. And by that book you meant Complainant's Exhibit No. 70 which I now show you?

A. That shows the mains only.

Q. Where did you get the services?

A. From the company's service record.

Q. From the company's service record?

A. Yes.

Q. What is that, in book form?

A. I think so; my recollection is that it is in book form.

Q. Isn't it in map form?

A. Not the one that I checked.

Q. The company has a map, has it not, of its mains?

A. Yes.

Q. Referring again now to Complainant's Exhibit 70, you took the figures from that book as to the mains, did you not?

A. Yes.

Q. If there is any error in that book, that error would appear in your appraisal?

A. No, because the error is negative: the company has more mains than they showed.

Q. How do you know that?

1238 A. By an actual check of all the mains owned by the company.

Q. Do you recall this question and this answer, stenographer's minutes, print, page 176, folio- 527 and 528:

"Q. With respect to the distribution system, street mains, etc., will you describe how you ascertained the quantities and the reproduction cost as of January 1, 1920?"

Do you recall that question?

A. Yes.

Q. And do you recall this last answer given thereto:

"I took the company's records as far back as they went, and took from them the quantities of mains that were laid from year to year, and that left a balance which presumably might have been there before the record began.

"I then took a map and entered on it all the mains as shown by the record; I then entered on that map, in different-colored ink, the mains that should have been there according to another old map; then I went to the company's file and took out the records of repairs and services and such work and checked this map that I had made on the old map, checked that up to find out whether the reports of the man who did the work on the service and work on repairs and work on extensions agreed with this map.

"Then there were still a few gaps and I had the ground dug at those places to identify the pipe that could not be identified either from records as having been laid or from the records as having been worked on since they were laid by actual inspection of the pipe in the ground."

Do you recall that answer?

A. Yes.

Q. Then you did find that there were some that you could not locate?

A. No, I located more than this record shows.

Q. Let me call your attention to this part of your answer:

"Then there were still a few gaps and I had the ground dug at those places to identify the pipe that could not be identified either from the records as having been laid or from the records as having been worked on since they were laid?"

A. Yes, that is clear.

Q. That is true, isn't it?

A. That is quite true, and I found the main when I dug.

Q. One minute—Then you had to dig, didn't you?

A. Yes.

Q. Where did you dig, in the streets?

A. Yes.

Q. And where?

A. I have mislaid my memorandum. I remember one place on Percy Street.

Q. Percy and where?

A. I don't remember the cross-street; I remember one on either Jamaica or Jaggar Avenue, not very far from the Main Street station. I have got the memorandum somewhere—I brought it with me.

Q. Are those public highways?

A. Yes.

1240 Q. They are not on the complainant's property?

A. No.

Q. Did you actually dig up the street?

A. Yes.

Q. Did you have a permit to do it?

A. Yes.

Q. From whom?

A. From the Borough President, I think it is.

Q. Of Queens?

A. Yes.

Q. And that record over there will indicate when it was?

A. Yes.

The Master: And where it was?

The Witness: Yes.

Q. Do you recall about when it was?

A. Several months ago; I don't remember the date.

Q. Would you say it was before the 1st of January, 1920?

A. Yes.

Q. Was it before the 1st of October, 1919?

A. I am not sure whether it was or was not; somewhere in the autumn of 1919 I think.

Q. Was it between September and December, 1919?

A. I am not absolutely sure.

Q. And you can't give us anything more definite?

A. Not at the moment. I will bring that memorandum in the morning.

The Master: How do you know you will be on the stand in the morning.

The Witness: I just assumed that, sir.

The Master: Go on, Mr. Neumann.

1241 Q. Now then, Mr. Miller, you presumed that there was a balance, according to your answer as read to you, from page 528, did you not?

A. The records showed a balance, showed that there was an opening there, an opening entry in the Mains Book, and the Insurance Map of the company showed mains that were not laid since 1901.

Q. You recall that that answer had these words "And that left a balance which presumably might have been there before the record began"?

A. Well, that is what the record was opened with.

Q. That answer was correct when you gave it, wasn't it?

A. That answer is correct. The record shows—this Main Book is

opened with a balance; this Main Book, Exhibit 70, is opened with a certain opening entry headed "Laid Prior to April 1, 1901," and I was trying to identify those mains.

Q. Then you started off with a presumptive balance, is that correct?

A. A balance as shown by the record, yes.

Q. Well, a presumptive balance it was?

A. Well, presuming that the record was correct, and I went out and proved it. I didn't want to take anything for granted and I didn't take anything for granted.

Q. Now, then, tell us just what you did, everything, every step and every detail, to satisfy yourself that there were no mains that were not used in this gas business of the company?

A. As far as the mains not being used in the gas business of the company, I took the map which I had finally prepared, went to the company's ledgers and identified those mains as being in use 1242 by their being services on them.

Q. How could you identify the various mains by the services?

A. Because you can't distribute gas without mains, and this company doesn't have a great multiplicity of mains on a single street.

Q. Do you mean to be understood as testifying that by looking over the records of the company's meters in service, that you could determine what mains the company had in use?

A. Not for a moment. You can't tell whether the mains were in use. I had identified the mains and, to determine whether the mains were in use, I went to the ledgers to see whether there were consumers at those places.

I also examined the maps to see whether mains—whether one section of mains could secure gas without going through other sections of mains.

Q. Did you find in your examination any mains that were not in service?

A. I found records of abandoned mains, yes.

Q. Where?

A. I couldn't say offhand, they are given here in the record book.

Q. Did you find any—

A. Wait a minute, do you want me to look them up and read them to you? They are here in the book.

Q. What is your answer?

A. Do you want me to examine the record book and read the mains shown as having been abandoned?

Q. Can you do that very readily without wasting too much time?

1243 A. Well, I don't know how much time it will take.

Q. Well, tell me this—you can check it up, Mr. Miller—are they shown on that Exhibit 70 that you have before you?

A. Yes.

Q. Every main that is not in use?

A. As far as I know every main that is not in use, every main that I have deducted from—there are no mains shown here that I

have used that are not in use. This won't necessarily show all the mains that are not in use.

Q. That is what I was trying to get at.

A. I do not know whether this will show all the mains that are not in use or not; I have not included any mains that are not in use.

Q. How do you know that?

A. Because I examined it to see whether all the mains I included were in use, and I can tell that from the system as I have laid it out on my map. You can see it is a complete system, checked by the consumers' ledgers.

Q. How about the discontinued mains, not connected, laying there idle?

A. I have taken no account of it.

Q. How would you know that?

A. Because all of the mains that I have accounted for are alive, therefore I would not have accounted for any discontinued ones.

Q. Are there no small mains there?

A. Quite a few small mains, as you will see in the list of mains given here.

Q. Just tell us——

A. Inch and a half, inch, two-inch mains.

Q. Just tell us how you know that those mains are alive and active and not idle?

1244 Mr. Ransom: Objected to as answered four or five times.
The Master: Overruled.

Mr. Ransom: Exception.

The Witness: Taking this map which shows the main system, I have identified, by services, on the mains using gas, all of the mains that are not transportation mains; the transportation mains may be identified by the delivery of gas through them, because they could not transmit gas unless they were continuous. I know that those transmission mains are delivering gas at the far end and I know that they could not deliver at the far end unless they were continuous.

Q. Who drew this map?

A. It was done under my direction by my own staff.

Q. And from the records of the company?

A. It was done from a record of the study I made of the whole situation, partly from the records of the company and partly from actual examination in the field.

Q. So that it is based upon three elements, the books of the company, an examination in the field——

A. And the records of the company.

Q. Yes, the records of the company, examination in the field, and what was the third one?

A. By the books and records of the company and examination in the field.

Q. That is two?

A. Yes.

Q. I thought you mentioned three?

A. I don't recollect anything else.

1245 Mr. Neumann: May we have the stenographer read back?

Q. Are there any other elements and facts that you took into consideration?

A. I took into consideration the finished map, as I understood the possibility of its being—or the necessity of its being a continuous system; that refers particularly to the transportation system.

Q. Did you take into consideration any other data, then, other than what you have just testified to, those two things?

A. The records of the company are very many things. The records of the company consist primarily in an order to the contractor to run the pipe; then there is a report from the contractor that he has run it; then there is a report from the inspector of the company that the work has been completed—in some cases that is in the form of a regular report, and in another case it comes in the form of a certification of the bill; then there is a bill from the contractor; then it is entered on this record book.

In addition, every time a street is dug up for purposes of repair of mains or repair of services, or for the purpose of putting in a new service, a card is brought in showing the size and location of the main, and all those cards I examined; in that way I got a complete picture of the whole system.

Q. What do you mean by the record book in that answer?

A. I said the main is entered into the main record book—that is this book, Exhibit 70.

Q. Well, now, the main record book would indicate what mains were laid, would it not?

1246 A. Indicate what mains are laid, and in many cases what mains are taken out or discontinued.

Q. What other record is there as to mains abandoned, discontinued or idle?

A. As far as I know there is no record other than this book of mains abandoned, discontinued or idle, and there is no record of some of the mains—no, I am wrong.

Q. Then the sum and substance of your entire testimony is that there is no record of Complainant's Exhibit 70 which would indicate mains abandoned, idle or discontinued?

A. Yes, I am wrong; there is a report. There is an envelope for each new job and for each change, and every job that is discontinued is included in those envelopes, and marked on a record card. There is a record card which I did not mention, too. The company has a card showing each job that has been done since 1901 or 1902. The main is just drawn on the card, the block is drawn out, and if it is discontinued it is indicated on that card and indicated in an envelope, which is indexed back. Yes, the envelope is indexed back to this book.

Q. Referring to what book?

A. In the first column of this record book——

The Master: Exhibit 70.

A. (Continuing:) Exhibit 70, will be seen numbers. Those numbers refer to a very complete file, indicating when the work was done, how it was done, and what went into the job.

Q. So that we get back to the same proposition, that the main record book does contain a record of the mains presumably discontinued and idle?

A. It presumably does, but it is not absolutely certain that every envelope would be indexed in there. But I think it is.

1247 Q. Would you be willing to say that that record was correct so far as idle and discontinued mains are concerned, not in use?

A. No, mains might have been discontinued before 1901 and this record would not give it. This record only purports to—

Q. You have attempted to appraise the mains and services, have you not?

A. I have appraised the mains and services.

Q. And it is based on this book, to an extent?

A. Based on this book—I took the balance from that book.

Q. Yes.

A. Took the length from that book, which is less than the total length and total value of the mains which the company owns. There are certain mains which the company has that are not in this book.

Q. You have no knowledge of your own as to the idle and discontinued mains, then, have you?

A. I have taken no account of any of the idle and discontinued mains.

Q. What do you mean by that, Mr. Miller?

A. I mean in my appraisal I included no idle or discontinued mains.

Q. How do you know you did not?

A. Because I had checked up all the mains in my appraisal.

Q. Did you not just state that that book, which is supposed to be a record, may be incorrect with reference to the balance?

A. I have stated that it does not include all the mains that the company has. The company has more mains than this book shows.

Q. So the book is not a complete record of the company's mains?

1248 A. It is not complete.

Q. And it is based presumably on a balance?

A. It has an opening entry which I have checked and which is correct. All of the mains shown in this opening entry are now in Flushing and are now in service.

Q. Did you find any mains that were shown and not in place?

A. No.

Q. Mr. Miller, tell us just how you know there are more mains than the book shows?

A. For one thing this section known as Queens borough Hill has a little complete distribution system of its own. None of that is shown in this—none of that except the mains of 4 inches and over are shown in this book.

Q. So that in that respect the book is incorrect and incomplete?

Mr. Ransom: Objected to on the ground that no such thing appears. The book is a record of mains laid by the company, not of mains purchased by the company.

The Master: Overruled.

Mr. Ransom: It does not follow at all that it is incorrect because it does not show mains purchased.

The Master: Colonel Miller can answer it then.

Mr. Ransom: Exception.

A. The book is incomplete in that it does not show the entire distribution system, the entire distribution mains of the company. It is correct as far as it goes.

Q. You recognize a distinction, Mr. Miller, between removing mains and retiring them?

A. Oh, yes.

1249 Q. What is the distinction?

A. Well, to my mind you retire a main when you abandon it, you may or may not remove it.

Q. The removal of it is the physical taking of it out of the ground?

A. That is what I presume you mean.

Q. I am asking you for your definition of those two words.

A. That is what I should call it. If the main were removed I should understand that it is taken out of the ground.

The Master: An abandoned main may or may not be taken out of the ground?

The Witness: Yes, sir, that is true.

Q. What steps did you take to advise yourself with reference to this company, in the case of a retirement of a main, as to whether or not it was taken off the books of the company?

A. I did not make any effort to find out whether in case it was retired, it was taken off the books. I found as a matter of fact that the company had more mains than its record shows.

Q. So far as your personal knowledge is concerned there may have been a great many mains retired which have not been taken off the company's books?

A. Well, as a matter of fact a great many mains have never been retired, in the case of this company; very little main has ever been retired.

Q. You have no personal knowledge of how they handled it from the bookkeeping end; you did not advise yourself as to that?

A. I did as far as any great amount of main is concerned, because no great amount of main has been retired in the case of this company.

1250 Q. What period are you speaking of?

A. I am speaking of the history of the Flushing Company and the history of Flushing.

Q. For what year?

A. In that whole system no great —

Q. From what year?

A. From 1850, or whenever they started, to date. It is a type of distribution system that could not have permitted of retirement.

Q. Do you state, Mr. Miller, that all the lengths of mains included in your inventory represent gas mains which are presently used in delivering gas to consumers, by this complainant company?

A. Yes.

Q. Absolutely and without qualification?

A. Absolutely and without qualification, and more are used than this.

Q. And that is based on the testimony that you have given here today?

A. More are used than this. This is not the full value of the mains of this company.

Q. You inventory this property at a price as of today, do you not, Mr. Miller?

The Master: The question is not allowed.

Q. Do you understand what is meant by the phrase "piecemeal construction?"

A. I think so.

Q. What is your interpretation of that phrase?

A. The whole enterprise is not built at once, but it is built in parts, over long periods.

Q. Do you know of any gas companies that have been built that way?

A. Yes, I think this particular company was.

Q. Any others?

A. I think that most of them are built that way.

1251 Q. In fact would you not say that all of them are built that way?

A. No.

Q. With very few exceptions?

A. There are a few exceptions, yes.

Q. But generally speaking most of them were built that way, piecemeal construction?

The Master: Colonel Miller said that four questions back—most of them are built that way. What is the use wasting time by going back?

Mr. Neumann: I would like to say this: I am having some data looked up, from which I want to finish the cross-examination of Mr. Miller. In the meantime Mr. Chambers wants to go ahead with it.

The Master: Very well.

Cross-examination.

By Mr. Chambers:

Q. You are the same Mr. Miller that testified in the Consolidated Gas Company case, are you?

A. Yes, sir.

Q. And in the Kings County Lighting Company case?

A. Yes.

Q. And you are going to give testimony in all these gas cases that are pending?

Mr. Ransom: Objected to as immaterial.

Q. That are in charge of the Consolidated Gas Company; are you not?

Mr. Ransom: Objected to as a misstatement of fact.

The Master: I am going to let the witness correct it, then.

A. I do not know.

1252 Q. You have made affidavits in all these motions now pending in the Standard and all these other companies?

A. Yes. I should hope, though, you would see the light and not try them.

Q. You claim, I understand from your evidence, to be an expert in prices of most all kinds of material?

A. I am familiar with the costs of construction of gas systems.

Q. I see you have appraised wax figures here?

A. I do not know of that.

Q. So if there is anything in here of wax figures, do you claim to be an expert on wax figures?

A. Oh, yes; there are some wax figures in this case.

Q. Then you do acknowledge you are an expert on that subject?

A. No, I do not. I know what those wax figures were worth as of the 1st of January; but I am not an expert on wax figures, no.

Q. How do you know what they were worth?

A. I inquired.

Q. You got that from somebody else?

A. I have got all the information I ever had in my life from somebody else, except a very small amount of original investigation that I have done. I have done a small amount of original investigation myself, but most of my information has come from some one else.

Q. Whom did you get it from?

A. I do not recollect at the moment.

Q. You appraised typewriters?

A. Yes.

Q. Where did you get that information from?

1253 A. I have bought a very large number of typewriters in the last five years—a very large number.

Q. Take these two typewriters, Underwoods, how old were those?

A. I did not know.

Q. You did not care either, did you?

A. No, not as long as they were—

Q. You have appraised them at \$112.50 apiece; where did you get that from?

A. That is what we were paying at that date.

Q. That is, you figured out that your company was paying \$112.50 for that model typewriter?

A. Yes.

Q. For that model?

A. That is the model they had.

Q. Do you know what model it was?

A. No.

Q. So you do not know whether those are the same ones that you were paying \$112.50 for?

A. I gave in my inventory the price of that model on that day.

Q. You do not know what model it was, though?

A. I can tell you, yes.

Q. You just told me you did not know?

A. I cannot remember, no. I do not remember all the details of this appraisal, and we cannot get very far if you expect me to.

Q. All right, tell us what model those two typewriters were?

A. I do not recollect. I have not the memorandum with me; it is in my office.

Q. A minute ago you did not know how old they were.

A. I do not.

1254 Q. So you think they are just as good, regardless of age?

A. I do not know how old they are.

Q. You put the new price on them, the price of a new typewriter?

A. That was the reproduction cost of those typewriters.

Q. New?

A. That particular model; new as of that date, yes.

Q. If they had been used three or four years would you put the same price on them?

A. I would.

Q. Just the same?

A. Yes.

Q. I see you appraised furniture?

A. Yes.

Q. All kinds of furniture?

A. Yes.

Q. Bookcases, and all that sort of thing.

A. Yes, sir.

Q. Do you claim to be an expert on the value of furniture?

A. No, but I know what furniture costs. I have bought a great deal of it and I know what that furniture was.

Q. And you based that on the knowledge you had buying other furniture?

A. On the knowledge I had, and of my staff. That is the basis on which my staff has bought tens of thousands of dollars' worth of furniture, and then I checked these figures with the actual purchases.

Q. Take the chairs and desks, how old were they?

A. I do not know; varying ages.

1255 Q. Do you know how old any of this furniture was?

A. Varying ages. The cost data furnished you shows when some of it was bought.

Q. Well, some of it is quite old.

A. I presume so.

Q. Then you proceeded to put a valuation on safes?

A. Yes, I did.

Q. There were five. What kind of safes are they?

A. They were fireproof safes.

Q. Whose make?

A. I do not recollect.

Q. Did you take the pains to inquire?

A. Yes.

Q. And have you any data showing whose they are?

A. Not with me.

Q. You claim to have a knowledge of the value of safes, do you?

A. I bought quite a number of fireproof safes.

Q. Of this same kind?

A. Yes, practically the same type. The same size. There is about one market price for an ordinary fireproof safe of a given specification. They are not burglar proof and not elaborate.

Q. It would not make any difference to you how old they were?

A. No.

Q. You would put the same value on them, regardless of that?

A. If they were in good condition, yes. If they were in a condition as good as new.

Q. I see you have appraised automobiles, too?

A. Yes.

1256 Q. Do you claim to be an expert on the price of automobiles?

A. I have bought a good many automobiles. The appraisal of those automobiles is what they cost. They were worth more January 1st than what those figures give.

Q. Did you know how old these machines were?

A. They were varying ages. That is all shown in the detail furnished you.

Q. Take this Maxwell roadster, that was a 1914 model, you said?

A. Yes.

Q. Apparently it had been used since 1914?

A. Yes, possibly.

Q. Must have been?

A. Not necessarily. A good many 1914 models were not used in 1914.

Q. It would not have made any difference to you how old that was, that machine?

A. Not as long as it was in good condition. All of that stuff is worth more today than it is there, because I put in the purchase price.

Q. You mean it is worth more than your figure here in 1920?

A. Yes.

Q. No matter how old it was?

A. No.

Q. I mean that automobile, that Maxwell roadster; you would not care if it was 50 years old, it would be worth more today than it was—

A. I cannot imagine an automobile 50 years old. Automobiles are not built like that.

Q. It would wear out, would it not, some time or other?

A. Automobiles will wear out, certainly.

1257 Q. Was this one worn out?

A. It was not a new machine, but it had been kept up in good condition.

Q. And yet you put the new price on it?

A. I put the price on it as of the time it was bought, but that is not the price today. It is worth very much more. That whole stock of automobiles is worth a good deal more than I inventoried it for, because the price of automobiles has gone up.

Q. That is not reproduction cost, then, Mr. Miller?

A. What is that?

Q. That is not reproduction cost, then?

A. It is below reproduction cost, therefore not reproduction cost.

Q. So your heading is not quite up to snuff on that?

Q. Well, I do not know just what you mean by "up to snuff."

Q. Well, its cost to reproduce.

A. I think I could reproduce them for that.

Q. The Maxwell touring car, do you know how old that was?

A. I think the date is given in—I did know, because I have got all the dates in this item, which shows when the stuff was purchased.

Q. But still you did not care; you did not care how old it was?

A. It is all given here.

Mr. Ransom: Complainant's Exhibit 96 for Identification.

The Witness: The dates are all given in Complainant's Exhibit 96 for Identification.

Mr. Chambers: All right, let us see how old that Maxwell touring car is.

1258 Mr. Ransom: Pages 25 and 26.

The Witness: Yes, they all show. All the dates show on that.

Mr. Chambers: Well, it is as old as the date shows on that, whatever that is?

Mr. Ransom: 1919.

Mr. Chambers: The Maxwell touring car?

Mr. Ransom: Yes, 1919.

Mr. Chambers: It shows on there?

The Witness: Yes.

Mr. Ransom: On page 26.

Q. The convertible top for car, did you look at that?

A. Yes.

Q. What kind of a car does that go on?

A. That goes on the Maxwell.

Q. Do you know how old that was?

A. Bought in 1919.

Q. That goes on that Maxwell touring car?

A. Yes.

Q. Where did you get that price for that top?

A. That is what it cost the company.

Q. You put in the cost there?

A. Yes, I just testified that all these items were cost. I just testified to that.

Q. You put in the cost, then, sometimes?

A. I put in the cost on all of these items.

Q. And you do not know whether it was the cost or not, do you?

A. Yes, I know it was the cost.

Q. How do you know?

A. I know it from the amount the company paid for it, as indicated by the receipted bills.

Q. That is the only way? Did you look up the voucher for that?

A. The receipted bill is the voucher.

1259 Q. No, did you go and take the pains——

A. Yes, absolutely, I looked up the bills for everything in this statement.

Mr. Ransom: Exhibit 96.

The Witness: What?

Mr. Ransom: Exhibit 96 for Identification

The Witness: Yes.

Q. This Ford runabout, Model 1912, how old was that?

A. That was bought in 1913.

Q. So that Ford is seven years old, and you put a price of \$546.50 on it?

A. Yes.

Q. That is reproduction?

A. Yes.

Q. That is what they paid, is it, in 1912?

A. Yes, in 1913.

Mr. Ransom: I call attention to the fact that this examination is proceeding along lines that are based entirely upon matters that are not in evidence.

Mr. Chambers: I have it right before me. Isn't this in evidence, printed in the record?

The Master: What is that?

Mr. Chambers: That (indicating paper).

The Master: That is the bill of particulars, is it not?

Mr. Chambers: Well, I will use the record here. It is all printed and you allowed it all in the record, this thing.

Mr. Ransom: You are examining as to date of purchase and cost of acquisition.

The Master: Isn't that a bill of particulars?

Mr. Ransom: Yes.

1260 The Master: Isn't that an amplification of your pleading?

Mr. Ransom: I hope so.

The Master: Then he has a right to refer to it.

Mr. Chambers: Isn't that ridiculous? I am asking him if he knew how old these things were, in his testimony.

The Master: Proceed.

Mr. Ransom: He has not testified to age of property or cost of acquisition. You are asking him as to cost of acquisition and age.

Mr. Chambers: I have not asked him for any such thing, Judge Ransom, and you are misconstruing, as usual. I am asking him if he knew the age of that Ford runabout, and he said 1913.

Q. That Ford has been used apparently seven years?

A. Yes.

Q. So you put the same price on it as when they bought it?

Mr. Ransom: How is it seven years? That is some new mathematics.

Q. You put a higher price on it, did you not?

A. I did not say so.

Q. Your price indicates it.

A. Well, if the price had gone up, or had doubled, I would double the price or have added very much to it.

Q. You would add to it and make it about a thousand dollars?

A. No, it would not increase that much, but to a great extent.

Q. You said you doubled it?

A. I modified my statement.

1261 Q. How much would you add to it?

A. I do not know.

Q. Do you know how much you can buy a Ford runabout for?

A. I do not remember.

Q. A model 1912.

A. I do not remember. I don't know anything about the model 1912.

Q. The Ford special body the same way?

A. That is what it costs.

Q. \$1,397?

A. Three special body delivery wagons.

Q. I say that is what they cost?

A. Yes, three special body delivery wagons cost \$1,397.02

Q. And they bought them in 1916?

A. They bought them in 1913, 1914 and 1917, as indicated by Exhibit 96 for Identification.

Q. How did you get the Ford special body delivery wagons, Model 1916, three? That is not correct, then, to that extent?

A. One of those was a 1916 model, another one was 1913, and one was 1914.

Q. That is not quite correct, then?

A. I have not that before me. Just what does it say?

Q. It says for special body delivery wagons, Model 1916, three.

Mr. Ransom: What page is that?

Mr. Chambers: Page 37.

A. There is only one 1916.

Q. The Ford engine and these other Ford parts, I will ask you the one question to cover them all, to save time. Rear end, steering post, front axle, radiator and body—those were the costs to the company?

1262 A. Yes.

Mr. Ransom: That is the way they keep their property in good condition, by replacing parts that are worn out.

Mr. Chambers: Let the witness testify.

Q. Did you examine each one of those parts, the Ford parts?

A. Yes, sir.

Q. That is, you looked at the steering post and the radiator, did you?

A. I looked them all over and saw them running.

Q. Why did you take the actual cost to this company of those automobiles and the Ford parts, instead of the reproduction cost?

A. Because there was such a tremendous amount of detail it was very much easier and quicker to do it that way.

Q. You proceeded on the theory that the quickest way was the best way, is that it?

A. In that case, yes.

Q. Now, the land in the very first beginning here, you took that from Halleran?

A. Yes.

Q. You took his figure for that?

A. Yes.

Q. You do not pretend to be an expert on land purely?

The Master: Don't you see what a waste of time it is to ask these questions.

Q. All of these items, street mains, services, meters, et cetera, are all undepreciated, are they?

A. Yes.

Q. You have allowed nothing for wear and tear?

A. Not in that exhibit.

1263 Q. Have you allowed any other form of depreciation, like improvement in the art, and obsolescence?

A. Nothing in that exhibit. There is an exhibit in the case showing what it will cost to put the plant in condition as good as new.

Q. Let us stick to this for a minute. Do I correctly represent you when I say that in this list here are \$2,907,062 you have nothing whatever for any kind of depreciation.

A. That is correct.

Q. In your list of repairs have you anything that will show how much it will cost to put those cars in first-class condition, or don't you allow anything for those?

A. I allow nothing for those.

Q. You did not fix up any repairs on them at all, they don't need repairs, I suppose?

A. Oh, some of them might have some work done on them, but the present price of cars is so much greater than the cost here, they are worth more than I have included them at.

Q. Have you your copy of this paper that I have in my hand?

A. I don't know what paper you have in your hand.

Mr. Ransom: Exhibit 66 for Identification. It begins at page 699 and following of the record.

A. Yes.

Q. You have invested yourself with that paper now, have you?

A. What did you say?

Q. I say you have invested yourself with that paper.

1264 A. I don't know just what you mean by "invested".

Q. Well, have you got it in your hand?

A. I have it, if that is plain English.

Q. Take not your index, but the summary item, H—you see the item there of \$505,960, don't you?

A. Yes.

Q. Is that the sum which you find on page blank there where it says "General Summary of Cost," page 712, in the printed record, where that total is \$510,470.18? Are you having any trouble in finding it, Mr. Miller?

A. That total does not seem to be —

Q. That don't gibe, does it?

A. Just what that discrepancy is I cannot say.

Q. In other words, it is a little matter of \$5,000, one is \$5,000 less than the other?

A. Yes.

Q. How can you explain that? You can't just now, can you?

A. Not at the moment.

The Master: What is that item for?

Mr. Chambers: Buildings and apparatus.

The Witness: The general summary of costs seems to have been carried forward at a lower figure than it is given at a later period.

Q. You would not want to acknowledge that that was a mistake now, would you?

A. No, I would not.

Q. Not yet?

A. Not at this stage of the game. My impression though is that it is.

Q. Suppose I show you a mistake over here that I think you will acknowledge. Let us look over here. I will show you one that

1265 I think you will acknowledge right off quick. Perhaps Mr. Ransom won't, but I guess you will. He is so constituted that he would not acknowledge anything.

The Master: I think you all are. I can't get you to agree on anything. I think if I were representing the State here I would have been able to agree with the complainant on some items and eliminate them.

Q. Look at page 84. Gas Appliances, and you find the 4th item, Peerless Junior Cookers. You have it \$38,120.40. Now, I will just give you the correct figure. It should be, should it not, "\$38-102.40"?

The Master: Oh, don't waste time on things like that.

Mr. Chambers: Of course, when we find a mistake there is nothing to it.

The Master: You don't think there is anything to it, do you?

Mr. Chambers: Yes, I do. There is an error in this exhibit.

The Master: Go ahead; next question.

Mr. Chambers: Of course, that does not mean anything if Mr. Miller makes one, and it is all right.

Q. Am I right that that is a mistake?

The Master: Oh, don't answer the question. It is a waste of time.

Mr. Chambers: Well, does the Master acknowledge that it is a mistake?

The Master: I haven't figured it, but I will assume that you are right about it.

Mr. Chambers: It would be pleasanter if Mr. Miller would acknowledge it.

The Witness: The transposition of figures makes an error of \$18.00, which will help to offset that \$5,000.

1266 The Master: Mr. Chambers, if you don't get to something useful I will take the witness off the stand.

Mr. Chambers: I will just take an exception when you do that.

The Master: Well, it won't do you any good.

Mr. Chambers: Not here.

The Master: Nor anywhere else.

Mr. Chambers: Well, possibly; we will see.

Q. It is your idea that machinery does not wear out, is it?

A. No.

Q. It does wear out?

A. Yes.

Q. Automobiles wear out?

A. Surely.

Q. And boilers wear out?

A. Surely.

Q. Everything wears out?

A. If not properly maintained it will wear out. Anything that is properly maintained does not wear out. If it is not properly maintained it goes.

Q. Do you want to say that if properly maintained it does not wear out?

A. Yes.

Q. Never does?

A. Never does. There may not be any original part after a series of years, but it will be the same form, the same machine. You can replace part by part.

Q. Have you ever heard of any court or any writer adopting your theory, Mr. Miller?

Mr. Ransom: Objected to as absurd.

The Master: Objection sustained.

1267 Mr. Ransom: This court has and the Supreme Court has.

Q. Along these lines?

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Are you familiar with the different rules laid down by the courts in fixing valuations for rate making purposes?

Mr. Ransom: I object to that.

The Master: Objection sustained.

Mr. Chambers: Exception. Would you mind stating the grounds of your ruling?

The Master: No, I won't state it.

Mr. Chambers: Exception.

The Master: It must be apparent to any reviewing Court. You are cross-examining this witness on a question of fact. We can leave the law out of it, so far as this witness is concerned. He has not qualified as a lawyer.

Mr. Chambers: I thought I was cross-examining on a theory.

The Master: I am not talking about theories. I am talking about facts. He states this as a fact.

Mr. Chambers: It is a fact that they don't wear out?

The Master: Yes.

Mr. Cummings: He is an expert witness testifying to a theory.

The Master: No, he is testifying to a fact.

Mr. Cummings: We should be allowed to prove that his theory has never been approved by any court.

The Master: Go ahead.

1268 Q. Has this company, the complainant company, ever removed any mains or any other part of their plant because it was worn out?

A. Not as far as I know.

Q. Did they remove some purifiers?

A. Yes.

Q. Why?

A. Because they were too small and in the way of the generator house which they were extending. It was cheaper to remove those purifiers and extend the generator house over that site, and put in new purifiers, than it was to build a new generator house. It was purely a question of economy. The purifiers were too small.

Q. They did not wear out?

A. No.

Q. They were not worn out?

A. No, they were not. Purifiers do not wear out.

Q. Did they remove any engines because they were worn out?

A. No.

Q. Not any?

A. No.

Q. Did they not remove any meters because they wore out?

A. No. Meters have corroded, I have no doubt. They have in most situations that I have been in, where they are not cared for.

Q. Then the company did not care for those properly?

A. No.

Q. Bad management, was it?

A. No.

Q. What kind of management was it?

A. Very good management.

1269 Q. Not to care for them?

A. Very good management in this company.

Q. Not to care for them?

A. No.

Q. Well, I don't know what you mean by "no."

A. No, I don't think you do. The facts are that there are certain exposed places in which gas meters are set. The company cannot go out and build enclosures for those meters. They set meters there, and in some cases they rust. Now, they do not care for them in one sense. That would require probably bringing them in every three months and repainting them. They leave them out there several years, and when they come in they are rusted.

Q. Are those the only meters they have scrapped that you know of?

A. As far as I know. They have scrapped very few meters, and I never made any elaborate investigation to get at the cause of the few meters that they have scrapped.

Q. You say you dug up some mains?

A. I did.

Q. And those I suppose you say, as you said in the Consolidated case, would last forever?

A. They will. There is no limit as far as I know on the life of a cast iron main.

Q. You don't think they would ever want to take them out because they were inadequate as to size?

A. I think in many cases—in some cases, not many, but in some cases they have abandoned pipe because it was inadequate as to size, yes, and I have no doubt they will do it again. Flushing is
1270 growing rather rapidly, and in the history of all gas companies they abandon pipe because it becomes inadequate as to size.

Q. Are you acquainted with the term known as improvement in the art?

A. I have been in the business thirty years, and I have made some inventions in connection with it, so I think I should.

Q. Would they not replace or displace some of their apparatus on that account?

A. The whole plant has been rebuilt on that account, and so I take it it may be done again. This was originally a coal gas plant.

Q. And it is your idea, your testimony, that all of this plant and apparatus, mains and services and meters have their full value from the time they are put in there—have a value equal to cost, we will say, up to the time they are removed?

A. They have a value greatly in excess of cost.

Q. Up to the time they are removed?

A. Greatly in excess of the cost at the present time.

Q. Right up to the time they are removed?

A. At the present time this plant has a value greatly in excess of the cost.

Q. That is to say, here is a main that the company finds is inade-

quate because it is not large enough, and they replace it by a larger sized main. You say that that main that is replaced has a full value up to the moment when it is displaced by the larger one?

A. If it is in good condition up to that time, yes.

Q. Those meters that are rusted, they had a value equal to their cost, did they?

1271 A. As long as they were performing the service I have taken them at their value. Every plant must have certain replacements, and parts are continually replaced. The system as a whole has its full value up to the time that it is shut down and abandoned.

Q. Well, in the condition which you spoke of, these meters in that condition, they were corroded or would corrode, did they have a value equal to their cost, reproduction cost, right up to the time they were taken out?

A. The individual meter had not at the time it was abandoned. Up to the time it was abandoned and charged to operating expense it should be carried as capital, and I have considered it as capital up to that time. When it is abandoned it is charged off and disappears from capital.

Q. And until abandoned it has a value equal to cost?

A. The system as a whole, yes. That particular meter may not have as much value, but it is carried on the books, and until it is charged off I take it at its full value.

Q. You saw the meters, did they have full value?

A. The system, yes.

Q. I say the meters?

A. The entire lot of meters, yes. The entire set of meters at the present time has a value greatly in excess of the cost.

Q. Disregarding war prices, would these meters have a value under those circumstances that I have mentioned equal to their cost right up to the time they were scrapped or retired?

Mr. Ransom: I object to that. The meters were not used in war, and the war is now ancient history. I object to it as
1272 incompetent and improper in form.

Q. And having no relation to the present inquiry in the year 1920?

The Master: Objection overruled.

Mr. Ransom: Exception.

A. What do you mean by war prices?

The Master: Present high prices.

Q. Disregarding the present high prices?

A. I cannot think of meters disregarding present prices today.

Q. Then think of them before the war, like you have given here. You have given pre-war prices, you gave it to the Master this afternoon.

A. Taking the meters bought previous to the war, and taking prices previous to the war, and assuming that prices have not in-

creased, the value of the meter system as a whole would not decrease.

Q. I want an answer to this question: Take a meter purchased in 1920, and retired in 1913 because it is corroded, as you said, would that meter have a value equal to its cost right up to the moment it was taken out and retired by the company?

A. The individual parts would not, no.

Q. Then the other meters would have to have more than the cost to make the thing balance?

A. Oh, not necessarily. As the few meters are charged off they are taken out of capital account and new meters are put in. As a matter of fact, a new meter set and operating is worth more than it costs. Otherwise the company would not buy it and set it.

1273 Q. Will you take the item of "Omissions and Contingencies," numbered XII. What does that cover?

Mr. Ransom: I object to that. It is fully explained on page 703 of the record. The notes indicate at great length just what is covered.

The Master. Objection sustained.

Mr. Chambers: Exception.

Q. Now, take boiler house. You have added there an item, "Omissions and Contingencies, five per cent," haven't you?

A. Yes.

Q. To each item you added Omissions and Contingencies?

A. Oh, yes; that is that \$5,000 which I could not match up. I deducted the Omissions and Contingencies from the summary and put it over here.

Q. The Omissions and Contingencies made about \$5,000, did they?

A. Yes.

Q. And on that whole business you made it \$25,000?

A. The Omissions and Contingencies on buildings made about \$5,000, which I afterwards deducted from buildings and added it in the summary sheet.

Q. And that is what you mean by these Omissions and Contingencies as to boiler house?

A. I have deducted all of these Omissions and Contingencies from the detail, or from the summary of the building itself, and carried it over to the final summary.

Q. In other words, you took out \$5,000 and put in \$25,000?

1274 A. I took out \$5,000 for Omissions and Contingencies on buildings, and put in \$25,000 for the Omissions and Contingencies on buildings and apparatus.

Q. In other words, on apparatus there is \$20,000 Omissions and Contingencies—is that right?

A. Substantially. To be exact, it is \$20,777.

Q. That was an estimate on your part?

A. An estimate based on my experience. So that \$5,000 was not an error after all.

Mr. Ransom: In fact, it appears on page 703 that he has done exactly that. It was there stated.

Q Your item for organization and development expense prior to construction is an estimate on your part?

A Yes, an estimate based on my experience.

Q How did you make up that sum of \$135,000?

Mr. Ransom: Objected to on the ground that the notes fully show.

Mr. Chambers: The notes do not do anything of the kind.

Mr. Ransom: It states the basis, and the detail of the things that go into it.

Mr. Chambers: I want to know what the details are. I think we are entitled to have it. If the Master rules it out, all right.

The Master: Are the details set forth on that exhibit, Mr. Miller?

The Witness: In general description. There is a general description of that here.

Q There is nothing but the lump sum of \$135,000, is there?

The Master: Let us see it. I sustain the objection to the question as put. You can ask him any more details that you want.

1275 Q You have put something in for services of sponsors. What do you mean by that?

A I mean the people who stand behind the enterprise. You may call them the promoters or such persons as get up the enterprise.

Q How much did you allow for those fellows?

A I have not subdivided it. I have had items of this kind run all the way from five to fifteen per cent of the whole enterprise. In this case the amount is something less than five per cent. I have not attempted to subdivide it.

Q You allow something for local consents—how much for that?

A I have not subdivided it at all.

Q How much did you allow for franchises?

A The same answer.

Q Supposing they did not pay anything for their franchises, you would allow something anyway?

The Master: Who is "they?"

Mr. Chambers: Any of the companies.

Q If nothing was paid for these franchises you would still have allowed something, would you?

A Nothing has been allowed to any amount in this case. If I had put in anything actually for franchises I should have put in a considerably higher amount. The franchise had a greater value.

Q You say the \$135,000 includes franchises?

A I do not say any actual payment.

Q You don't know anything about whether they made any or not?

A I do not. I think in all human probability they paid more than this amount in the case of this company.

1276 Q What is this amount?

A. \$135,000.

Q. For franchises?

A. No, for everything, for the amount which I have allowed and which I say I have not subdivided.

Q. Does it include anything for franchises or not?

A. If anything was paid it is intended to include it.

Q. Mr. Miller, you made this up?

A. I made it up.

Q. And you said amount the items was franchises. Did you allow, or did you not allow, anything for franchises?

A. I have stated that I have allowed about five per cent to cover the preliminary expense, and which in my opinion carries anything that was probably actually paid to the local authorities. I don't know whether they paid anything or not.

Q. Did you make any investigation to determine what they paid the local authorities?

Mr. Ransom: I object to this line of inquiry.

The Master: Objection overruled.

Mr. Ransom: Exception.

Q. Did you?

A. Not to the local authorities. The books show a very large payment for franchises.

Q. To whom?

A. To the predecessor company.

Q. And you treated that as a payment for franchises?

A. I did not. That was an amount of something like a million dollars and we are discussing a figure of \$135,000.

1277 Mr. Ransom: Counsel is failing to distinguish between the expenses incurred in the obtaining of a franchise, and payment for a franchise.

By the Master:

Q. You say the books show a payment of a million dollars for franchises?

A. The books opened with a million dollar item for franchise.

Q. Do the books show a payment for franchises?

A. They do not show any cash payment, but they open with an item of a million dollars ad something for franchises, and against that stocks and bonds were issued.

Q. There were only \$600,000 of stock and \$800,000 of bonds altogether?

A. The opening entry shows a very large item on franchises and property.

The Master: Is that opening entry here?

Mr. Ransom: No, the original book is not here.

Q. Is it your testimony that anything you found on the books justifies you in the statement that they paid a million dollars for franchises?

A. No, I don't believe they paid that. I know there was a great deal of real property in that account, from my own investigation.

By Mr. Chambers:

Q. That was an opening balance, was it, that is all?

A. That is all.

Q. Or a balancing entry?

A. Well, it was an opening entry.

1278 Q. Wasn't it a balancing entry?

A. It probably was. They probably lumped the whole plant in it.

Q. Now you allow something for salaries of stenographers?

A. It is all included in that.

Q. You can't state how much you allowed for that?

A. I had not subdivided it. It is five per cent based on my experience as the lowest item.

Q. What do you base that five per cent on? You have mentioned that two or three times?

A. I have based it on everything except financing.

Q. Five per cent on what sum?

A. It is approximately five per cent on the whole figure less the financing.

Q. And you figure five per cent on your total of \$2,907,062, do you?

A. Less the financing. It is five per cent on \$2,700,000.

Q. Well, what is the \$2,700,000? That is your reproduction cost as of January 1, 1920, less financing?

A. That is correct.

Q. What?

A. That is correct, as explained in the text. The text explains that at great length.

Q. So you can't tell me what you allowed for clerks and other assistants?

A. I stated that five per cent is intended to cover the whole; I have not attempted to subdivide it.

The Master: Oh, say "no."

1279 Q. You can't give me any further details, like incorporation fee?

A. No.

Q. Do you know what the incorporation fee would be?

A. No.

Q. You haven't any idea, have you what it is in this State?

A. No.

Q. Do you know what they had to pay the State for capital stock tax?

A. No.

Q. And I see you have repeated again, expenses in connection with obtaining ordinance, franchises, permits and the local consents; you have that in twice; did you allow it twice?

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Mr. Ransom: Objected to as not at all either accurate or a fair statement of what he said.

The Witness: I don't see any case where it is repeated.

Q. Well, you said services and expenses necessary in the organization, development of the company from the time of the inception of the project to the time when the charter, franchises, local consents, permits and so forth had been procured.

Mr. Ransom: But that says

Mr. Chambers: Just a minute, I am examining him.

Mr. Ransom: You are misrepresenting, you stopped examining.

Mr. Chambers: You are the one that is misrepresenting.

1280 Mr. Ransom: Well, read it

The Witness: You left out the first two words.

Mr. Chambers: An insane person thinks that everybody else is insane and a person who misrepresents thinks everybody else is misrepresenting—do you see the analogy?

The Witness: You left out certain words when you read off that item.

Q. You didn't include it twice, did you?

A. I did not.

Q. You figured five per cent as at the present time, how do you explain that?

A. Because it costs five per cent as at the present time.

Q. But this was done long ago?

Mr. Ransom: Objected to as absurd. He is testifying here to the present reproduction cost.

The Master: Pure argument, Mr. Chambers.

Mr. Chambers: Well, I wish I could ascertain the workings of the innermost recesses of Mr. Miller's mind as to why he thinks they ought to have returned, on \$135,000, five per cent of their reproduction value, when they organized years ago, way back.

The Master: Don't bother asking Colonel Miller about it, it is argument pure and simple.

Q. Now, the cost of financing, what are the details in regard to that?

Mr. Ransom: Objected to, they are fully shown on pages 704 and 705 of the record.

1281 The Master: Objection sustained.

Mr. Chambers: There are no details shown at all. Now, if the Master please, you are ruling before you see what is in here; there is no figure given at all.

Mr. Ransom: There is a figure of \$150,000 representing approximately six per cent on the project, and the various things which go to make it up are shown with great particularity.

Q. Well, what services are included in the \$150,000 for financing, whose services?

A. The services of engineers, lawyers, printers, engravers, advertising—not advertising, I am wrong—yes, advertising.

The Master: Well, Mr. Chambers, there is a whole page of this stuff following page 5, all of page 6; you don't have to repeat all that again. Cross-examine him on what he says there—he has sworn to all this on page 6.

Q. Well, can you give any detail for this item at all, or is that all you can do, what is stated on pages 5, 6 and 7?

The Master: He has lumped it all in one figure, that is what he has done—you haven't itemized this figure of \$150,000 into the various elements that you referred to, have you?

The Witness: I have not. The actual mechanical cost, so to speak, the actual operating cost in the broker's office cost three per cent of the selling price—that alone; then the other two per cent is taken up in some profit to them, and the cost of making investigations, preparing mortgages, printing mortgages, printing stock, and so forth—it is a low figure.

Q. Now, the cost of financing generally is taken care of by a discount on the bonds issued, isn't it, usually?

A. Not necessarily; sometimes they are sold above par and sometimes below. The figure that I use here—

Q. Wait, you don't need to go on.

A. The figure that I use here is the difference between the price at which—

Mr. Chambers: I ask the Master to stop the witness, because he is wandering.

The Witness (continuing): Between the price at which securities go to the banker and that at which they go to the public.

Q. I asked you if it was not usually taken care of by discounts on the bonds?

A. No; there is a great deal of financing done in the case of stock.

Q. How do you know it was not done in this case, with this company?

A. I don't know how it was done in this case.

Q. Will you say it is not usually done? Can't you answer that categorically?

A. Please read that again, what isn't usually done?

Q. The cost of financing.

The Master: By discount on the bonds.

The Witness: The financing in bonds is usually taken up by discount on bonds, but all financing is not done in bonds. Unfortunately, present public service corporation financing is done more or less in bonds because they can't get anything else—where they get anything.

Q. When bonds are issued, should not the discount be amortized during the life of the bond?

A. Under no circumstances. If they have part of the bonds which

go to pay for the services rendered, no. Taking the bonds that are sold below par, take the part that does not go to pay for services rendered, yes, that should be amortized, but the other part that goes to pay for services rendered should be capitalized, and that is what I have included here.

Q. I can't explain the operation of your mind in allowing the figure of \$200,000 for engineering, superintendence and general contractors' expense and profit.

Mr. Ransom: I object to the admission of the Attorney General as being no question and not relevant to the issues here.

The Master: I haven't heard any question. I heard the admission.

Q. How do you explain that large item?

The Master: That is pretty fully set forth.

Mr. Ransom: Objected to as already set forth.

Mr. Chambers: Engineering and superintendence?

The Master: Mr. Miller has given us a page and a half of stuff on that.

Q. Can you give me any details of that, engineering, superintendence and general contractors' expense and profit?

The Master: Give us the figures.

The Witness: I figure 5 per cent goes to the engineer and 8 per cent to the contractor.

1284 The Master: But you haven't figured up the details of these items, 5 per cent on each item of construction, or 8 per cent?

The Witness: No. I figured it on the total, that is the way these contracts are usually let.

Q. Can you give me any details of the next item, administrative, legal and miscellaneous general expense during construction \$45,000?

Mr. Ransom: Objected to, more than a page of details are given.

The Master: Not separately set up or itemized.

Mr. Ransom: No.

The Master: That is what Mr. Chambers means.

The Witness: Of course I could reply as to each individual item.

The Master: Can you say how much was for auditor, of this sum: how much for bookkeeper, how much for time-keeper, how much for each individual?

The Witness: I could build up, I suppose, a theoretical staff, but I couldn't do it offhand.

The Master: In arriving at this figure that you give here, did you figure it that way?

The Witness: No, I based it on my experience in doing this class of work.

The Master: As a lump sum?

The Witness: It is a percentage, 2½ per cent on the construction; that is the way it is arrived at.

Q. Do you mean to say you cannot give us how much your
1285 item of engineering, superintendence and general contractors' expense and profit is made up of engineering?

A. It is in the record.

Q. What is in the record?

A. The statement that 5 per cent goes to engineering and 8 per cent for the contractor.

The Master: But you are on the item of administrative legal and miscellaneous general expense during construction, Mr. Chambers.

Q. How much, 5 per cent and 8 per cent of what, for engineering, superintendence and general contractors' expense and profit?

A. 13 per cent on the items of mains, buildings and apparatus.

Q. That is your reproduction cost, 8 per cent on your reproduction cost as at the present time?

The Master: On buildings and apparatus, mains?

The Witness: On mains, buildings and apparatus.

The Master: How about services?

The Witness: They are not included.

The Master: Meters?

The Witness: No.

The Master: Nothing else?

The Witness: Nothing else.

The Master: 13 per cent on \$1,577,000, is that right?

The Witness: That is right.

The Master: All right, what is next, Mr. Chambers?

Q. Interest during construction, \$101,096?

The Master: Tell us how you get that, other than you have stated on page 10 here of this exhibit; how is that arrived at?

1286 The Witness: That is calculated per half a year at 8 per cent rate on items 2 and 3; that is, the buildings, apparatus and street mains, and it is figured for one year at 8 per cent on organization and development expense prior to the beginning of construction.

The Master: What is that \$18,000 item?

Q. In your summary you have interest during construction \$101,096, and over here on page 10, at the top of page 10 it is \$18,600?

A. Well, it is an error on page 11.

Q. You mean there is a terrific difference there?

A. Evidently.

Q. The difference between \$18,600 and \$101,096?

A. Quite right.

Mr. Chambers: Your Honor still thinks that it is an immaterial error?

The Master: I thought this \$18,600 had reference to some item included in the \$101,096, that is what made me ask the question.

Q. Now I would like to ask you which is right, \$18,600 or \$101,096?

A. \$101,096.

Q. Why isn't the other one the proper one, \$18,600?

A. Because the other one is wrong; I don't know what the figure is—

Mr. Chambers. Can't I take my choice in this case?

The Master: Let us get along, see if we can't finish this thing up tonight.

Q. You said you took a year in computing that interest
1287 during construction; wouldn't a part of that plant or whatever it was be in operation in less than a year?

A. No.

Q. You don't think so?

Q. None of it?

A. No.

Q. Not in the case of mains?

A. No.

Q. You think it would be a whole year that they would be idle?

A. I think from the time that construction started to the time that gas was turned on, under this system it would take a year.

Q. Supposing they turned the gas on in some of the mains in six months?

Mr. Ransom. From when?

Q. From the time they began to lay the mains—what then?

A. They wouldn't do it.

Q. Supposing they built their plant in the first six months and had not laid out a dollar for mains and built the mains in the second six months; you couldn't figure the whole year for the whole outlay?

A. I haven't figured the whole year for the whole outlay; I figured half the year for the whole outlay.

Q. Would you say the construction period is six months or a year, then, Mr. Miller?

A. The construction period is a year.

Q. Well, then, you have taken a year and averaged it?

A. I figured the interest on the construction during a
1288 period of six months, assuming no payment would be made on construction at the beginning of a year, and that full payment would have been made at the end of the year, so that the average interest period is six months.

Q. When in the year do they begin to lay mains as a matter of fact?

A. It depends entirely upon when you get your money and get ready to start. I assume that this plant would start about the 1st of July; start construction about the 1st of July and start operating about the 1st of July.

Q. As a matter of fact when do they begin to lay mains?

A. As a matter of fact they begin to lay mains whenever they need them and have the money to pay for them.

Q. What time of the year, the 1st day of January?

A. I have begun to lay mains on the 2d day of January, never on the 1st.

Q. In this company here, when do they begin to lay mains in this climate, in this company?

A. I presume when they need them, I don't know; there is no fixed time, in my experience, for the laying of mains, except the time when they are required.

Q. And that is the best answer you can make?

A. That's the best answer I can make. Of course, no company lays any more mains than absolutely necessary when the ground is frozen.

Q. In other words you figured the whole plant would be idle for a year?

A. No; on the contrary I figured it would take a year to 1289 build it—the whole plant would not be idle at all; they would start as soon as it was finished.

Q. Then you would not start operating any part of it until the whole was completed?

A. No. Part of a gas plant is not of much use until it is finished—6 inches of main would shut down a whole plant.

Q. You could not conceive of their being able to operate part of their plant in the first 6 months, could you?

A. Oh, I could conceive of it, yes.

Q. How do you know they didn't do it?

A. Maybe they did, but I have figured to build this plant in the cheapest possible manner. If I start to build it in parts and run it in parts, so that the operating men would be in the way of the contractors' men, the cost would be greater than the amount I have estimated.

Q. Isn't it good engineering policy to lay a certain number of mains, connect up your services, put them in operation and lay the rest?

A. It may be good engineering.

Q. You don't know of any company that goes to work and lays off all of its mains at once, do you?

A. Never.

Mr. Ransom: Objected to as immaterial

The Master: Overruled.

Mr. Ransom: Exception.

The Witness: Never knew of it being done, no.

Q. You have assumed it here, haven't you?

A. I have assumed it.

1290 The Master: Let us get down to the next item.

Mr. Chambers: What is your favorite item?

The Master: Take the next item of tax, we have had enough of interest.

Mr. Chambers: Which is the one you wanted?

The Master: The next one is tax during construction.

Q. How long a period did you cover for that?

A. One year, as I explained.

Q. You thought they would have to buy the land a year ahead of the time when they started constructing?

A. No, I didn't figure that way.

Q. How did you figure?

A. I figured they would buy the land when they started constructing.

Q. Why the year, then?

A. As I explained at some length, it would take a year to get this enterprise going.

Q. Now, working capital, \$165,000?

The Master: On the last page he tells you how he gets it up—get down to that.

Q. You said it was more than that; you thought you would make it more, for that.

A. I made what I thought would be necessary for the satisfactory operation of this company if they did not have any larger brother to lean upon.

Q. That is, you think their past experience is not a good proposition to go by?

A. Their past experience indicates that they have been running on somebody's else capital to a certain extent.

1291 The Master: How much have they been using for working capital.

The Witness: Around \$125,000, I think, I am not entirely sure of that; I only looked it up for the one year; I think the present balance sheet shows about \$125,000.

Q. How many cents a cubic foot would that be, per thousand cubic feet?

A. It is approximately fifty cents a thousand cubic feet.

Q. So you think that is a fair amount, do you, Mr. Miller?

A. I think it is a very important amount for it to have if the company is to operate economically and pay its bills promptly and take advantage of cash discounts.

Q. You don't think fifteen cents a thousand cubic feet would do?

A. No living company could operate on that.

The Master: What good would that do? If he thought it would do, he wouldn't make it fifty.

Mr. Chambers: You ask him some questions, will you, about this? You don't believe in fifty cents.

Mr. Ransom: It is a small company, I don't see how they could get along on less.

The Master: We will adjourn to a quarter of ten tomorrow morning.

Mr. Chambers: If the Master please, I have to be in the Appellate Division to-morrow and Mr. Neumann can go on in my absence.

The Master: Yes, and Mr. Tobin can, too.

Mr. Chambers: All right, until I get here.

1292 The Master: Well, if you are not here I will close the case; I am going to hold it for all three counsel to be here.

Mr. Chambers: I don't want to be unreasonable, but wouldn't you declare a little recess?

The Master: I will not declare five minutes if you are not here—quarter of ten to-morrow morning, and then we will take an adjournment at a quarter after until eleven o'clock.

Adjourned to Friday, May 28, 1920, at 9:45 A. M.

1293 NEW YORK & QUEENS GAS COMPANY

VS.

CHARLES D. NEWTON, &C., et al.

Before

Abraham S. Gilbert, Special Master.

New York, May 28, 1920.

Met pursuant to adjournment.

Present:

Mr. Ransom and Mr. Vilas, of Counsel for Complainant.

Mr. Chambers, Mr. Tobin and Mr. Cummings, of Counsel for Defendant Newton.

Mr. Neumann, of Counsel for Defendant Lewis Nixon, Public Service Commissioner.

Mr. Ransom: I offer in evidence a certified copy of the order of the Public Service Commission for the First District, made on September 17th, 1918, in Case No. 2330, prescribing the regulations as to filing a rate schedule for gas corporations.

Mr. Neumann: May I ask what the purpose of this is? There does not seem to have been any foundation laid for it.

Mr. Ransom: The tariff is in, and I think I ought to have the order also.

The Master: What did you say was in, Judge?

Mr. Tobin: I did not hear you.

Mr. Ransom: The tariff schedule filed pursuant to this is in.

Mr. Neumann: Objected to on the ground it is immaterial, incompetent and irrelevant, no proper foundation laid for it.

1294 The Master: Overruled.

Mr. Tobin: Exception.

Mr. Neumann: Exception.

Marked Complainant's Exhibit No. 97.

Mr. Ransom: I offer in evidence certified copy of the order of the Public Service Commission for the First District, made on May 20th,

1913, in case No. 1453, authorizing the purchase of stock of the New York & Queens Gas Company.

The Master: By whom?

Mr. Ransom: By the Consolidated Gas Company of New York.

The Master: What is the date of that?

Mr. Ransom: May 20th, 1913.

Mr. Neumann: Before making an objection, if the Court please, I would like to state this. I do not like to be technical, but it seems to me that there ought to be some orderly procedure here with the introduction of exhibits, so that we may have an opportunity of cross examining—cross examining the testimony upon which these exhibits are based. Here is something taken out of the clear sky; there is no opportunity of examining anybody with reference to it. It is put in the record here, and it may be so far as I now know correct, and it may be all wrong; I know nothing about it.

The Master: If you want to recall anybody for cross examination I will let you do it. If counsel wants to recall anybody for cross in the light of this, I will let them do it.

Mr. Neumann: We will object to it on the ground it is incompetent, irrelevant and immaterial, and no foundation laid for it.

1295 The Master: Overruled.

Mr. Tobin: Exception.

Mr. Neumann: Exception.

Marked Complainant's Exhibit No. 98.

ALTEN S. MILLER resumed

Cross-examination.

By Mr. Neumann (continued)

Q. Mr. Miller, you recognize the term "going value?"

Mr. Ransom: Objected to as vague.

The Master: I will allow it.

Mr. Ransom: What does he mean, recognize?

A. I think so.

Q. What is your definition of the term "going value?"

The Master: He has given us that.

Mr. Ransom: Objected to as immaterial.

The Master: He has given us that.

Mr. Neumann: Has he?

The Master: Yes.

Mr. Neumann: I did not know that. That must have been while Mr. Chambers was cross examining him.

The Master: Why, he gave it in his direct yesterday. He described an element which he figured at between \$525,000 and \$550,000, my recollection of it was.

Mr. Ransom: That is correct.

The Master: He did not call it going value, but it was quite apparent that is what he referred to as going value. That is
1296 what you referred to as going value?

The Witness: Yes.

Mr. Ransom: What public service commissions call going value.

Mr. Tobin: I move to strike that out.

Mr. Neumann: I move to strike that out.

The Master: I am not going to strike out statements of counsel. What is the use of making those motions?

Q. What is your understanding, Mr. Miller, of the term "good will?"

Mr. Ransom: Objected to as immaterial and incompetent.

The Master: I will allow it in cross examination.

Mr. Ransom: Exception.

A. Good will is something that obtains in the ordinary manufacturing corporation, where the public is free to come and go as it pleases. I have customers accustomed to deal with me and who can buy the same goods elsewhere, but by reason of the relations established between me and the customers, they prefer to deal with me. That I call good will, where the customers are free to come and go as they please, but prefer to come to me by reason of previously established relations.

Q. I take it from that that the distinction you draw, then, between the term "going value" and the term "good will" is that one is in a sense a monopoly and the other is free competition; is that correct?

A. Not entirely. Good will often costs nothing to produce. Going value, as I understand it, is an actual cost. It would cost that
much to secure the business. Sometimes good will costs much
1297 more than it is worth and sometimes very much less.

By the Master:

Q. Really, it is not to secure the business, it is to build up the enterprise?

A. Build up the enterprise as a going concern, a considerable part of it.

Q. As I understand this good will item——

Mr. Ransom: You mean going value item.

Q. (continued). Yes, going value item, it is really what you lose by the time you get it going right—really what it costs you to get it going right?

A. It is what it costs to get it going right.

Q. That is about what it means, is it not?

A. Yes.

Q. How long do you figure you have that expense for getting it going right?

A. It depends entirely upon the efforts that are made to reproduce it, in a short while or long while.

Q. Take this situation here, as I understand it this enterprise over

at Flushing started back in 1855, or thereabouts, and I take it that those original concerns spent this money that you are asking about to get this concern going right?

Mr. Neumann: That is objected to on the ground it is irrelevant and immaterial.

The Master: I do not know what you are objecting about. I am attempting to cross examine and bring out a line in your favor and you start objecting. I am predisposed to be against the going value, and I was about to cross examine Colonel Miller to bring out my view of it, and then you started objecting. I cannot understand that at all.

Mr. Neumann: Exception

Q. I was interrupted when I was about to say, Colonel Miller, that I take it it is fair to assume these companies who started this plant in 1855 began the expenditures of these moneys that you figure the going value—going value item?

A. Yes.

Q. More or less?

A. Yes.

Q. That continued a good many years?

A. In all probability they did not expend the amount that I estimated it would cost to reproduce under intensive conditions.

Q. I am not concerned as to the amount or as to the intensive character of the work.

Mr. Ransom: We are dealing here with present cost to reproduce this business, this concern.

The Master: That may be, but I am going to get on the record what is in my mind as an answer to your proposition.

Q. (continued). I will ask you, whether it was intensive work or whether the expenditure was greater or less, the fact is that this expenditure that you refer to as being part of the going value expenditure was being made right along?

A. Yes.

Q. They probably did not make any money at the start, they were losing money perhaps when they started in, the probability is their return showed a deficiency between what they should have gotten and what they actually got at the very start?

A. That is probably true.

1299 Mr. Neumann: Your Honor is now talking of 1856?

The Master: Yes, I am bringing it up to date.

The Witness: That is probably true.

Q. That continued over the years as these reorganizations and extensions took place—

Mr. Neumann: And mergers.

Q. (continued). And right down to 1904, I suppose, did it?

A. Well, I should say probably long since.

Q. No, I am carrying it down now from 1855 to 1904.

Mr. Ransom: I object to the question on the ground that it does not relate to the present inquiry. We are dealing here with the question of what it would cost now to reproduce this enterprise as a going concern.

The Master: But I am frank to say my mind runs back to the rule I adopted in the Consolidated case, that if possible I am going to determine what it costs your company, or this New York & Queens Company, to acquire all of this going value and franchises and rights and property in 1904, and if I can find that you probably in good faith and honestly paid a certain sum for it, representing stock and bonds at that time, I will be inclined to make a finding that the actual investment was the stock and bonds and other property and money issued for it in 1904, plus additions and less withdrawals.

Mr. Neumann: To which we respectfully except.

The Master: Yes, I am not going to satisfy either side; 1300 I can see that.

Mr. Ransom: To which the complainant more earnestly excepts, and much more sincerely excepts.

The Master: All right. And then in conjunction with that I am going to have in mind what I believe to be the value of these plants in pre-war times. From some calculations I have made my mind runs in the direction of a finding very close to what you allege in your complaint as the value of them. Now I am telling you frankly how my mind is running on this, and I am going to make my record the same as I did in the Consolidated case.

Mr. Ransom: I do not object, your Honor, on the matter of what the complaint alleges. The complaint does allege an investment; it says bare-bone investment is so much, that the cost to reproduce is very much more.

The Master: Yes.

Mr. Ransom: That the present value is very much more?

The Master: Yes.

Mr. Ransom: That aside from the bare bone investment—

Mr. Tobin: Did you use those terms in there?

The Master: Wait a minute, Mr. Tobin.

Mr. Ransom (continuing): —there are various other elements of value, all of which the complaint alleges.

The Master: Yes, I understand that.

Mr. Ransom: And no more serious type of confiscation could be inflicted, even by a public service commission, than to restrict a company to a return upon bare bone investment.

1301 The Master: I do not quite get your point as to bare bone investment. Is there any distinction between investment and bare bone investment?

Mr. Ransom: I think there is, yes.

The Master: What is it?

Mr. Ransom: You take a matter of mere cost of certain tangible property, that does not represent the entire outlay of the enterprise.

The Master: No, but the cost of the tangibles and intangibles does.

Mr. Ransom: If an adequate allowance is made for intangibles.

Mr. Tobin: It depends on what you call intangibles.

The Master: Your complaint alleges this, Judge—that this property was purchased in 1904 for \$600,000 of stock.

Mr. Ransom: The tangible property cost so much.

The Master: No, all of the property.

Mr. Tobin: Yes, all of it.

The Master: All of the property. That is just what I looked at in the complaint yesterday, as I read it, that you bought all of the property. That is why I traced through the title, that is the reason I looked at these exhibits yesterday. I did not do it to waste time or to amuse myself; I was looking for something.

Mr. Ransom: I knew very well what you were doing.

1302 The Master: As I read the record up to this time, the New York & Queens Company bought all the perpetual leases and franchises and tangible and intangible property in Flushing—I mean bought all the stock—therefore was in a position to merge with the Flushing, and the Flushing plant owned everything, as I read it, at that time. I may not have it exactly correct, but the impression I got as I read through all these exhibits and the testimony to date was that the Flushing plant owned everything in 1904 and the New York & Queens owned all the stock of the Flushing plant.

Mr. Tobin: No, that is not it exactly, if your Honor please.

The Master: What was it?

Mr. Tobin: There was organized the New York & Queens Gas Company.

The Master: Yes.

Mr. Tobin: Which was simply just a plain ordinary stock company.

The Master: Yes, but it owned the stock of the Flushing plant at the time of the merger.

Mr. Tobin: I do not believe so.

The Master: That is what the statement was in the merger papers. That is as I read it.

Mr. Ransom: How could it merge if it did not?

The Master: That is as I read it, the New York & Queens first bought the stock of the Flushing Company, then it merged with the Flushing Company. At any rate, as a result of that,
1303 everything came in, tangibles and intangibles, into the New York & Queens.

Mr. Neumann: On August 1st, 1904.

The Master: July 15th is the date, really, in 1904.

Mr. Ransom: It paid for that property at that time.

The Master: Yes.

Mr. Ransom: That is not an index of its value.

Mr. Tobin: There is this point, too, which you do not want to miss—that the New York & Queens Company did not have a stick of property, tangible or intangible.

The Master: I do not care anything about that. The result of

the merger was that it owned all of it, and at that time a certain sum was paid for it in stock and bonds.

Mr. Ransom: Which was its value at that time.

The Master: The result was that this combination bought all of the stock, \$600,000, and a portion of the bonds; it does not say how much, something less, therefore, than \$800,000 and odd in bonds. That is \$1,400,000 in 1904.

Mr. Neumann: What is that?

The Master: \$1,400,000.

Mr. Tobin: Oh, no.

Mr. Neumann: How do you get that amount?

The Master: \$600,000 in stock and \$800,000 in bonds.

Mr. Tobin: There was not any such amount, if your Honor please.

1304 The Master: It did not exceed that amount.

Mr. Neumann: Oh, no, quite the contrary.

Mr. Tobin: It did not—anywhere near that amount.

The Master: Well, it did not exceed that amount. The exact amount I have not got yet.

Mr. Neumann: The fact is this—

The Master: Wait a minute. I am explaining to Judge Ransom what is in my mind.

Mr. Ransom: And they object to your being against me.

Mr. Cummings: It did not exceed \$2,000,000, either.

Mr. Neumann: It did not exceed \$5,000,000.

The Master: What?

Mr. Neumann: It did not exceed \$5,000,000.

The Master: It did not exceed \$5,000,000? I am talking about \$1,400,000.

Mr. Neumann: I did not want your Honor to put on the record here the fact, or create the atmosphere, that in 1904 this company owned property of the value of \$1,400,000 and odd, which is not the evidence.

The Master: I did not say anything about it.

Mr. Ransom: I object to that, too, because it is too low.

The Master: I said that they paid not in excess of \$1,400,000 in par value in stock and in bonds. It was less than that, 1305 because the complaint says it was part of the bonds, not all of them. Running from that time to date, there were certain additions and withdrawals, and on December 31st, 1914, there was in existence this operating plant—or 1915, or whatever you may call it, or 1916—this operating plant, and its distributing system and all the rest of it.

Having in mind two things, first, what I may be able to find was actually paid for it, plus the actual cost of withdrawals and extensions and additions, and taking into consideration, too, such evidence as I may have in the case as to the value of an operating and distributing plant of this character in this locality prior to the war period, say at \$4 or \$4.50 or \$5 per thousand cubic feet—

Mr. Ransom: Or \$6.

The Master: Or \$6, or whatever the evidence will show.

Mr. Neumann: Why not make it \$50?

The Master: Well, there is not any evidence clearly before me on that yet. I am going to make a finding that the value of this property in pre-war times was so much money, and that its value now is a great deal more; and I shall refuse to find what its value is at this time, except that it is a great deal more and perhaps twice as much, on Mr. Miller's testimony, than it was before the war.

Mr. Neumann: Why not make it three times?

The Master: No, Colonel Miller says twice, and as his testimony now stands, I am just finding twice. If you bring a witness on who says it is three times, I might find three times, but as the record now stands it is twice.

Mr. Neumann: To which, of course, we do not assent.

The Master: The question of going value to my mind gets back to this: I believe the going value was paid for in 1904. That is what is in my mind, and that is what I am going to bring out from this witness.

Mr. Cummings: I do not believe you can.

The Master: Or in large part.

Q. Colonel Miller, am I correct in my understanding of your testimony that this going value expenditure continues from the time the plant is complete and ready for operation, through the years, until it is gotten in good going condition?

Mr. Neumann: If your Honor please, may this appear, that at the conclusion of the discussion the defendants all took exception to the Master's views as stated.

The Master: Yes.

Mr. Ransom: The complainant has been completely protected by the defendants.

Mr. Tobin: There is more than that, if your Honor please. We do not believe that the Master should read into the record here sufficient value so as to boost up what this company said they paid for it in the way of stocks.

The Master: I am not reading in any value, Mr. Tobin; I am expressing the theory upon which my mind is working.

Mr. Tobin: But it is just an attempt to build up their value; that is what you are trying to do—something that does not exist and did not exist at the time.

Mr. Neumann: The question is objected to on the ground it is incompetent, irrelevant and immaterial, no proper foundation laid for it, purely hypothetical, speculative and a guess.

The Master: Overruled.

Mr. Tobin: Exception.

The Master: Read the question now.

(The question was repeated by the stenographer.)

A. It continues that long and all of the time that the company is advertising, canvassing and working to secure new business.

Mr. Tobin: If your Honor please, we ask that that answer be stricken out. There is no foundation for any such answer here and, more than that—

Mr. Neumann: It is not responsive to the question.

Mr. Tobin (continuing): —the books themselves indicate what there was as concerns any such expenditure as that.

Mr. Ransom: \$1,032,000.

The Master: Motion denied.

Q. Colonel Miller, I limited my question to a particular situation. There comes a time when the plant is gotten into good going condition, does there not?

A. Yes.

Q. That means, in a case like the Flushing plant, that the people in that section have been brought to the point of using gas instead of using their coal ranges; is that right?

1308 Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, based on an assumption, an hypothesis and a guess, and no proper foundation been laid for it.

The Master: I do not believe you know what you are talking about.

Mr. Neumann: What was the Master's comment?

The Master: It is quite apparent to me you do not know what you are talking about when you object to a question of that kind.

Mr. Neumann: Exception.

Mr. Cummings: We do not know what it is going to lead up to, that is all.

The Master: I am trying to indicate to you; I am trying to cross-examine this witness.

Mr. Ransom: In justice to my client I ought to take an exception to each one of these matters.

Mr. Neumann: But you have not, and that is the best evidence of what it is going to lead to.

Mr. Ransom: I am willing to have the Master bring out the facts.

Q. Isn't that what you call going value, to get the people away from some other thing that they are using, to the thing that you want them to use?

A. Yes, to the extent that it is done.

Mr. Tobin: That is purely mythical.

Mr. Neumann: I move to strike the answer out.

The Master: The trouble, Mr. Tobin, is that you are about 1309 twenty-five years younger than I am, and you do not recall the trouble that these companies had to get the people away from coal ranges and to the use of gas, and once having gotten them to use gas you do not need to do any more to get them to use it. That is what I am trying to bring out from Colonel Miller. I have not seen coal ranges to speak of in that Flushing section in fifteen years.

Mr. Tobin: The particular point about it, if the Master please,

is that there is trying to be read into the record here capital expenditures which are not capital expenditures.

The Master: I am not worrying about that.

Mr. Tobin: Well, we are worrying about it.

The Master: I am trying to demonstrate the proposition in behalf of the defendants that there is not any going value for me to allow in this case, and you are not letting me do it. It is a perfectly stupid line of objections; there is no sense to it at all. I am asking him whether there was in 1865, 1866, or 1870, and I am trying to eliminate it since 1904, and you gentlemen will not let me. It seems to me my duty in this case to get this record in such shape that it will clearly present my views on this question of going value, and I am going to do it. Both sides can keep on objecting as long as they please.

Mr. Neumann: We are only endeavoring to make the record.

The Master: You are simply lumbering up the record with a lot of useless objections.

Q. Colonel Miller, do I correctly conceive the idea that you have in mind of the going value item?

1310 Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial and based purely on speculation, guess and an hypothesis.

A. I do not think you do.

Q. Take a plant and take a section like the section in Douglaston, where houses are going up and where they have been pressing for the extension of mains to get gas; you do not have to spend any money to get them to use gas, do you?

Mr. Neumann: Objected to on the ground it is irrelevant, incompetent and immaterial. I am objecting to this entire line. If the Master please, I will do this, instead of interrupting the Master's question. If the Master will state that it is upon and over the objection of the defendants, until such time as the Master states that he has concluded his inquiry—

The Master: You can go on and object as often as you like and make yourself as ridiculous as you please. The objection is overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

A. It does not require any great effort to get some of them, probably a considerable number of people, to use gas to a certain extent, but it does require canvassing and advertising to get them to put in water heaters and use an additional amount of gas, gas irons and—

Q. Isn't that what is included among this gas company's accounts as a distribution cost, this publicity work day after day; isn't that what I allowed in the Consolidated case as part of the distribution expense, publicity work?

1311 A. I think in the case of almost all of these companies the cost has been largely charged to operations.

Q. Then if it is charged to operation it does not run into the separate capital account, does it, for going value?

A. It is an asset. It is not a capital account on the books, no.

Q. But as I understood you, Colonel Miller, there is a clear distinction between the operating expenses of a company once you have got it into going shape and it is beginning to make money, when you want to make more money, and the situation where you are losing money in order to get it into going shape. That was the item of expense of capital value that I understood you were talking about.

A. That is what I say, I did not think you understood me. My estimate of the going value is the value of having these customers using gas.

Q. Well, that is good will.

A. And what it costs.

Q. That is good will.

A. What it costs to produce it.

Q. That is good will.

A. No, I do not think what it costs to produce it is good will.

Q. Do I understand this, now, that going value, at any rate in your theory, to some extent is what it costs by way of a loss in running the company, before you are getting a profit on your investment, to get the company in such shape that it begins to show a profit?

1312 A. It may be represented by a loss, but not measured by the loss.

Q. Not necessarily measured by the loss, but that is what it costs the company to get it into a position to make money, is it not?

A. A part of that cost is, yes.

The Master: All right, proceed.

Mr. Ransom: We are dealing here with what it costs to reproduce this enterprise.

The Master: I know your thought, Judge Ransom, I know it perfectly, and on the idea of reproduction cost, starting a new company today, Col. Miller's testimony, of course, is consistent with his testimony as to the cost to produce the entire enterprise. It simply illustrates and confirms the view I have, that it is a perfectly ridiculous basis on which to charge the consumers with gas. It is too wild a guess.

Mr. Neumann: I hope your Honor will stick to that.

The Master: I have told you over and over again that I will not make a finding that the cost of reproduction is the cost today. I did not do it in the Consolidated case and I will not do it in this case.

Mr. Ransom: Or its reproduction cost in 1914 would involve the same elements.

The Master: Yes, the same element, but not to that extent.

Mr. Ransom: The amount might not be quite as large on a 1914 basis.

The Master: Of course not, but my view is still the view that I expressed in the Consolidated case, that a public utility is entitled to a fair return on its actual investment and nothing else, and there is not any other safe basis; and that to my

1313

mind represents the value in the years, up and down, just as the Illinois court said in the case indicated.

Q. Mr. Miller, what do you understand by the term "deferred maintenance"?

A. Deferred maintenance is the work that is not done today. If a holder is painted every two years, and it was painted a year ago, the deferred maintenance is the liability *or* the stockholders to paint that holder when it requires painting.

Q. Generally speaking, is it fair to say that it means repairs which should have been made and which have not been made?

A. No, that is not my idea. In the case of this company every repair that should have been made has been made.

Q. There is a deferred maintenance in addition to necessary repairs?

A. I don't know of anything.

Q. Well, it is practically the same, isn't it?

A. No, not at all.

Q. What is the distinction between deferred maintenance and necessary repairs?

A. Necessary repairs are repairs that must be made now. Deferred maintenance are repairs which should not be made now——

The Master: And which are bound to come.

The Witness: Which are bound to come. Necessary repairs which must be made in order to keep the plant going.

Q. Contrasted with the term "repairs" and "deferred maintenance," is there any distinction in your mind between those two terms?

1314 Mr. Ransom: I object to that as academic and vague and having no relation to the cross examination.

Mr. Neumann: Evidently, as I understand the witness' answer, he harped on the word "necessary," so I have taken out the word "necessary," and framed the question without the word "necessary."

The Master: That is rather a meaningless question. Mr. Miller's testimony is that there are two kinds of repairs, as I understand it. There are the immediate repairs, and there are the repairs that are bound to come. In other words, take a holder, it will run a couple of years. During those two years the repair which is actually coming is deferred until the time arrives when it should be done. Then the time arrives when it must be done. I should say the distinction between deferred and necessary repairs is that one is immediate and one is prospective.

The Witness: Exactly.

Mr. Ransom: In the natural course it comes about.

The Master: When it becomes immediate it simply brings into actual existence the thing you have been expecting for several years.

The Witness: Yes.

The Master: The same repair which was deferred has now become immediate?

The Witness: Yes.

Q. Is it not a fact, Mr. Miller, that deferred maintenance is really repairs that have been neglected? Is it or is it not so?

1315 A. If repairs have been neglected they are deferred maintenance, certainly. In the case of this company repairs have not been neglected.

Q. How do you know that?

A. Because I have examined the plant most carefully.

Q. Now, at page 947 of the printed minutes, folio 2840, you testified as to expenditures necessary to put the plant of the New York & Queens Gas Company in the condition in which it was when new?

A. Yes.

Q. Is that correct?

A. Yes.

Q. And your figure there was \$6,144.07?

A. Yes.

Q. What do you call that figure?

A. Expenditures necessary to put the plant of the New York & Queens Gas Company in the condition in which it was when new.

Q. I mean in the light of what we have been discussing, deferred maintenance of repairs, or neglected repairs, or what?

A. It is maintenance that will eventually be done, but it is not necessary now, and which would not be economical to do now.

Q. Do you wish to be understood as stating that it is possible to take old equipment and put it in exactly the same condition as new equipment?

A. Yes.

Q. And that you could do with this plant by spending \$6,144.07?

A. Yes.

Q. No question about that at all?

A. Absolutely none.

1316 The Master: A considerable portion of this operating plant is pretty new, is it not?

The Witness: Yes, this plant has been rebuilt largely in recent years.

Q. Do you know as a matter of fact as to the particular age of portions of the plant, I mean of your own knowledge?

A. I know of my own knowledge the age of the gas holder which my company built recently. For the rest, I got my information from the original contracts and the company's records.

Q. Now, I notice the superintendent's dwelling here is one item, you say \$490.74 would be necessary to make it as good as new. Is that correct?

A. Yes, sir.

Q. Were you here when Mr. Connor testified that building was 20 years old?

A. Yes.

Q. And that it was a frame building?

A. Yes.

Q. And you want this court to believe that for \$490 you can

make a new frame building out of an old frame building 20 years old?

A. I have not said a new building. I said a building as good as that building was when it was new.

Q. When to your knowledge were the holders of this company painted last, your own knowledge I mean?

A. Within the last two or three months.

Q. When prior to that time, of your own knowledge?

A. I don't know when they were painted prior to that.

Q. What do you understand by the term "depreciation," Mr. Miller?

1317 Mr. Ransom. I object to that as vague and indefinite. He has not testified about depreciation.

The Master. I will allow it.

Mr. Ransom. Exception.

A. Lessening in value due to wear and tear.

Q. Are those the only two elements that enter into depreciation?

The Master. Lessening in what kind of value due to wear and tear?

The Witness. In useful value.

The Master. Productive value you mean, sales value, junk value.

The Witness. That would require work to get it back in the condition in which it was when new.

The Master. To do the work that it was intended to do when new.

The Witness. Yes.

The Master. In other words, if a plant was intended to produce a million cubic feet of gas when new, and without doing any further work on it it will now produce a million cubic feet of gas a day, would you say there was no depreciation?

The Witness. Oh, no, but if going through that plant we found that the engines had gone down, and that the machinery was rusted and had been neglected, and you could see that it had been neglected and see that it had been damaged and was going to pieces, and that immediate expenditures or future expenditures would be needed to correct the damage that had been allowed to accumulate or accrue, then I should say it was depreciated.

1318 The Master. In the condition in which you have described this plant it would not be doing the work it was intended to do when new, would it?

The Witness. Oh, yes. You can keep an engine running even though it is knocking somewhat.

The Master. Well, it won't run very long if it is knocking.

The Witness. Well, no, it would not.

The Master. I am talking about running for a substantial time, am talking about running for three or six months, and doing the work.

The Witness. Well, even three or six months. Take a gas holder for instance—

The Master. I am talking about a machine. A machine won't knock for six months without knocking itself to pieces, will it?

The Witness: No, a machine would not. A running machine goes down more rapidly than anything else, and if a machine is not kept pretty well tightened up and in good shape it goes to pieces pretty rapidly.

Q. Mr. Miller, haven't you really only described observed depreciation?

A. Absolutely, only observed depreciation.

Q. Now, in your elements of depreciation you only gave wear and tear. How about obsolescence?

A. Obsolescence is not a thing which should be paid for by the present consumer.

Mr. Neumann: I didn't ask him that, and I move to strike it out.

The Master: Yes, don't try to tell us what the consumer should pay for, just answer the question.

1319 He asked you whether obsolescence was a part of depreciation. Mr. Miller, is obsolescence part of depreciation?

The Witness: Not any depreciation included by me.

Q. That is all right, I am developing your theory. How about inadequacy?

A. There is nothing inadequate in this plant.

Q. I didn't ask you that.

Mr. Neumann: I move to *strike* the answer out.

The Master: Motion denied.

Mr. Neumann: Exception.

The Witness: I did not include anything that was not there.

Mr. Neumann: I move to strike that out.

The Master: Yes. In talking about depreciation have you included inadequacy?

The Witness: This does not relate to this case, it is general?

The Master: Yes.

The Witness: In general it would depend on the degree of inadequacy.

Q. Now, is not inadequacy one cause of depreciation, generally speaking?

The Master: In value, depreciation in value?

Mr. Neumann: Yes.

Mr. Ransom: I object to this line of inquiry. It does not relate to anything bearing on this case, it does not relate to any matter as to which this witness has been interrogated on direct. It is merely philosophical, theoretical and speculative.

The Master: Objection overruled.

1320 A. In selling an individual piece of apparatus, as an automobile for instance I should say—I mean an individual piece of apparatus for particular service I should say inadequacy might measure depreciation, yes.

Q. Now, you don't confine that solely to automobiles?

A. I made a mistake, I did not mean that.

Q. You meant that generally speaking about any piece of plant

A. Any piece that you expect to sell, yes.

Q. Now, is not obsolescence also a cause for depreciation?

Mr. Ransom: I object to that as vague and indefinite and no cross-examination, and meaningless.

The Master: Objection overruled.

A. It is a form of depreciation certainly.

Q. Now, you recognize the terms "Retirements" and "Replacements"?

A. I think so.

Q. Is it not a fact that every piece of plant, whether you are talking of a gas utility or any other manufacturing company, that retirements and replacements are due to either of these causes, wear and tear, obsolescence, inadequacy, or collectively all of them?

A. In my experience I have never seen a major piece of apparatus retired except for obsolescence or inadequacy. I have seen much apparatus retired for those two reasons, but only for those two.

Q. In other words then your theory is that a major piece of apparatus in a gas utility never wears out?

1321 A. If properly maintained it never does, in my experience.

Q. Parts from time to time of any major portion would have to be replaced, would they not?

A. Certain parts of certain apparatus, all parts, no.

The Master: As I understand Col. Miller, it is because the parts of large apparatus are being constantly replaced and renewed and repaired and changed and put back, that the machine still continues to be a new machine?

The Witness: That is correct.

Q. Do you know from your experience in the gas business that repairs are charged as an operating expense?

A. Yes.

Q. And eventually there must come a time, if your theory is correct, that the entire original piece of machinery must have been replaced by new parts completely?

A. Not necessarily. I do not say that every part of every machine will be replaced. On the contrary I excepted certain parts. Take a purifying box, for instance. That is made of cast iron with wooden trays, and a steel cover. The cover rusts from time to time if not kept painted very frequently. Sometimes we put new sheets, as we call them, on the cover. Sometimes we put new trays in the boxes. Cast iron has an unlimited life. I have never seen any purifying boxes made of cast iron replaced except for defects in original design, where sheets had broken. Similarly there are other parts around a plant which do not give out.

Q. Mr. Miller, would it be fair to say that a good definition of depreciation is that loss in worth or value due to all causes, such as wear and tear, decay, obsolescence, and inadequacy?

1322

Mr. Ransom: I object to that as having no bearing on this case.

The Master: I will allow it.

A. That sounds like a good definition, yes.

Q. You would be willing to accept that?

The Master: I think we have enough on that.

A. I think it sounds all right.

The Master: Mr. Halbie has written out a good definition.

Q. Now, Mr. Miller, do you know whether or not this company retired a boiler in the year 1919?

A. Yes.

The Master: They did?

The Witness: Yes.

Q. If the boiler had been installed in the year 1918, would you have taken into consideration in arriving at the value of that boiler that it had only one year of useful life?

Mr. Ransom: I object to that, there is no foundation for such a question.

The Master: Objection sustained. I have let you go beyond the strict rule of cross examination in order to develop whatever you had in mind within reasonable limits. Colonel Miller was called to prove the reproduction cost of this plant, and I think you have gone entirely too far.

Mr. Neumann: I think he was called for more than that. Colonel Miller was called for direct yesterday morning and they were allowed to put in here certain figures.

The Master: Yes.

1323 Mr. Ransom: About going value.

Mr. Tobin: He had a lot of figures about finances and all that sort of thing.

The Master: All on the cost of reproduction?

Mr. Tobin: Yes, which you might say are entirely theory.

The Master: Assuming that to be so, what pertinency has this question that Mr. Neumann has just asked of Colonel Miller, as to what he might have done with a boiler that was installed in 1918, or was not installed in 1918?

Mr. Tobin: Colonel Miller has said he was in touch with the plant, that he was there at various times, and that he had largely to do with the replacing of many of the parts that were put into the property, and it would be within his knowledge to know the condition of that boiler in 1918, just the same as it was within his knowledge to know the condition of the gas holder which was replaced.

The Witness: I would like to have an opportunity to explain this.

The Master: Next question, Mr. Neumann.

Q. Is it your idea, Mr. Miller, that there is no diminution in value in any plant or part of plant until it is actually replaced?

Mr. Vilas: I object to that.

The Master: I shall sustain the objection upon the ground that I think that line of examination has gone far enough.

Mr. Tobin: We will take an exception to your Honor's ruling.

Q You testified in your direct examination, did you not, Mr. Miller, that you were a witness in the Newtown case, Newtown Gas Company, before the Public Service Commission?

A. Yes.

Q. Do you recall what year that was?

A. I think it was 1913, or 1914.

Q. 1913, the spring of that year?

A. I think it was 1913 or 1914; I am not quite sure which date it was.

Q. You were testifying for the Newtown Gas Company in that case?

A. Yes.

Q. Now, reading from the minutes in Case No. 1610, Public Service Commission, First District, do you recall this question put to you by Mr. Dykman:

"Q. Proceeding in the manner and upon the assumption stated, will you give the result of your computation in dollars and cents?"

Mr. Vilas: I object to that as having no relevancy here.

Mr. Neumann: It is going to lead up to a certain point. I cannot develop it immediately.

The Master: Objection overruled for the time being.

Mr. Vilas: Exception.

A. I don't remember the question, no.

Q. The answer you gave to that question was "\$2,331.985"?

The Master: Do you remember giving that answer?

A. No, I don't remember it. I have no doubt it is all right.

The Master: To what does that refer? What has that relation to?

1325 Mr. Neumann: This has relation to going value. I will develop it in a minute.

The Master: Well, get down to it.

Mr. Neumann: I have to ask him this first question in order to bring out the point.

The Master: Assume now that the record shows that.

Mr. Neumann: All right.

Q. Do you recall that at a later time in that hearing you were called back to testify with reference to this figure?

A. No, I do not recollect that I testified more than once. I recollect testifying to going value, but I do not remember the date.

Q. The question and answer as just read was given on January 28th, 1915. The question and answer that I now want to read to you was given on March 29, 1915. The question is:

"Q. What I want is the figure year by year so that we can see exactly what figures you used and how you treated depreciation and amortization."

The Master: I thought you were talking about going value.

Mr. Neumann: Here is his answer:

"Well, I don't think in any case they have much bearing here because I think they will show that the going value has been paid back. The error that I made makes a difference that instead of \$2,331,000, I got \$1,600,000."

Mr. Vilas: I object to that as incompetent, irrelevant and immaterial, and as having no bearing on the issues here.

The Master: That is all perfectly meaningless to me.
1326 These questions and answers do not seem to refer to any particular subject matter.

Mr. Neumann: The witness admitted that he made a mistake of more than \$700,000 in his computations on the question of going value.

The Master: Is that the purpose of these questions and answers?

Mr. Neumann: That is the purpose of this question and answer.

The Master: All right, go on to the next one.

Q. Mr. Miller, can you tell us from your Exhibit 66 or any other sustaining details which you have, just what you have figured the cost to reproduce mains, services, meters and connections required to be laid under the order of the Public Service Commission of the first District, to the district known as Douglaston?

Mr. Vilas: I object to that as already completely covered by the direct and cross.

The Master: Objection overruled.

Mr. Vilas: Exception.

A. The question is what it did cost?

The Master: No, what you estimated as the cost to reproduce the Douglaston extension.

The Witness: No, I did not have the Douglaston extension separated out from the other part of the system.

Q. Would it be possible to prepare that?

A. If you take the length of mains and multiply them by the units shown in my exhibit, that will produce it, on a sub-contract basis. I do not just have the length of mains run in Douglaston.

1327 Q. You had to take that into consideration in arriving at the reproduction cost of this property, did you not?

A. I took all of the mains into consideration.

Q. Yes.

A. But I do not know what part of these mains were in the Douglaston extension.

Q. Now, Mr. Miller, you made an affidavit in the New Amsterdam Gas Company case, on their application for a preliminary injunction did you not?

A. Yes.

Q. That affidavit is verified May 12, 1920?

A. I don't remember the date; I suppose it is all right.

Q. Do you recall this statement in the affidavit "In the early

part of 1919 I was retained by the New Amsterdam Gas Company and other companies of the Consolidated System to make appraisals and inventories of their property?"

A. Yes.

Q. You also made an affidavit in the case of the Central Union Gas Company on their application for an injunction?

A. Yes.

Q. And substantially the same wording appears there except that you make it refer to the Central Union Gas Company?

A. Yes.

The Master: What is the point here, Mr. Neumann: He made affidavits in all these six or seven cases.

Mr. Neumann: Yes, and all about the same time.

The Master: All right, what about it.

1328 Mr. Neumann: And he made affidavits in other cases. I want to show that he could not possibly have been spending the time that he testified to in this case.

The Master: Well, get right to it. You made an affidavit in all these cases that you were retained to make appraisals and inventories of all these various plants?

Q. In addition to that you made an affidavit in the Brooklyn Union Gas Company case, for the Brooklyn Union?

A. Yes.

The Master: How many cases have you been working on since January 1, 1919?

The Witness: Eight, I think.

The Master: And the time during this period was divided among all these various plants?

The Witness: Yes.

The Master: So, when you testified that you had devoted the greater part of a year to this plant, it meant in conjunction with the work that you were doing on other plants?

The Witness: Yes, in conjunction with other work.

Mr. Neumann: I must object to the Court taking the examination out of my hands.

The Master: I am taking it up because it takes you too long to get to it. If you have a point get to it. This witness gave me the impression that he had spent the greater part of a year on this plant. In two words I bring out the proposition that he was working on eight other plants during this year? What more do you want? What are you complaining about?

1329 Q. Now, the course of procedure that you followed in the New York & Queens case with reference to checking each figure and such sustaining detail, and everything, did you follow that in every case?

A. I have not. I am much more familiar with these other plants than I was with the Queens, and I had to spend more time on Queens to get familiar with it.

Mr. Neumann: If the Master please, that brings me to a point where Mr. Chambers was going to go forward with some of the other questions that Mr. Miller treated of.

The Master: Are you all through?

Mr. Neumann: I would be through if Mr. Chambers were here. I would have to develop a certain subject that he has himself touched upon and is quite familiar with, and that is the element of working capital, which is an important subject.

The Master: Have you anything else that you want to ask?

Mr. Neumann: Well, the position is this, if the Court please: I have made an arrangement with Mr. Chambers with reference to this—

The Master: Don't worry about Mr. Chambers. Have you anything else you want to ask?

Mr. Neumann: Why, I will have to open up a subject that I have not fully primed myself on, and it is rather unfair, because I wanted to go into it fully before I ask any questions that might be useless.

The Master: I am going to ask you defendants what you have got to say. I am not going to give you the floor again.

1330 Q. Mr. Miller, what elements did you take into consideration in arriving at working capital?

The Master: I thought you said Mr. Chambers was going to take up working capital.

Mr. Neumann: You have asked me to go on.

The Master: No. If you have an arrangement with Mr. Chambers for him to cover working capital you need not bother with it. I am trying to find whether there is anything else that you have to ask that Mr. Chambers does not intend to cover.

Mr. Cummings: There may be some other points that Mr. Chambers would want to cover. If he were here we could have a conference with him and determine that, but now we cannot.

The Master: Have you anything else that you can go forward with, Mr. Ransom?

Mr. Ransom: Yes, I have the McMillin testimony that I am going to read in.

The Master: Is there a stipulation about that?

Mr. Ransom: Yes.

The Master: I will suspend with Col. Miller for a while, and we will take this McMillin testimony.

Mr. Ransom: They may want to make objections.

Mr. Neumann: There was some correspondence about it. The correspondence fully covers it.

Mr. Cummings: We might want to make further objections, unless it is fully covered in the original record.

1331 Mr. Neumann: I think we would be willing to rest on the judgment of the men who represented the defendants there. The correspondence will indicate very clearly what has been agreed to.

The Master: The stenographer will spread on the record the following letters:

Letter from Judge Ransom to Ely Neumann, dated May 20, 1920.
Letter from Ely Neumann, Assistant Counsel, to William L. Ransom, dated May 21, 1920.

Letter from Judge Ransom to Ely Neumann, dated May 22, 1920.

Letter from Ely Neumann to Judge Ransom, dated May 25, 1920.
The letters above referred to are as follows:

May 20, 1920.

New York & Queens Gas Company v. Newton.

Ely Neumann, Esq.,
Assistant Counsel,
49 Lafayette Street,
New York City.

DEAR SIR:

I have reached the conclusion that it is advisable to present upon the trial of this case the testimony of the Honorable Emerson McMillin along the lines to which he testified in the Consolidated Gas Company case.

Mr. McMillin has recently been ill, and it would be a great convenience, to him and to me, if you were willing to have his 1332 testimony read in from the Consolidated case record, instead of requiring his attendance in Court again. He was very vigorously cross examined in the Consolidated case, and all that could be read in.

If you are unwilling to do this, please let me know, not later than Saturday. If his testimony is not to be read in, I shall have to try to procure his presence for next Wednesday.

Very truly yours,

New York, May 21st, 1920.

New York and Queens Gas Co. vs. Newton et al.

Hon. William L. Ransom,
120 Broadway,
New York City.

MY DEAR SIR:

In response to yours of the 20th inst., would say that I see no objection to reading into the record of this case the entire testimony given by Mr. Emerson McMillin in the Consolidated case, provided however that it is stated on the record, that by so doing all the defendants do not waive any objections thereto, but on the contrary object to the testimony, as inadmissible, immaterial, incompetent and irrelevant; and that the objections and rulings and motions to strike out and rulings contained therein shall have the same force and effect as if herein taken and given.

1333 Lastly upon the understanding that the witness will be produced before the Master by complainant before the entire case is closed, for further cross examination, if any of the defendants should so desire, and so notify complainant's counsel.

I may add that the above also expresses the views of Mr. Chambers on behalf of the defendant Newton.

Yours very truly,

ELY NEUMANN,
Assistant Counsel.

May 22, 1920.

New York & Queens Gas Company v. Newton.

Honorable Ely Neumann,
Assistant Counsel,

Public Service Commission for 1st Dist.,
19 Lafayette Street,
New York City.

DEAR SIR:

Your letter of May 21st, in reply to mine of May 20th, is received, and I beg to thank you for your courteous compliance with my suggestion as to the testimony of Honorable Emerson McMillin.

The conditions which you attach are acceptable, but I think I ought to add this: If you should call for Mr. McMillin's presence as a witness for further cross examination, and if through 1334 his illness or otherwise I cannot produce him, and his testimony is stricken out in consequence, I shall have the right to call another witness to testify on the same subject matter, with the same right as though originally called.

Very truly yours,

— — —
New York, May 25, 1920.

New York and Queens Gas Company vs. Newton.

Hon. William L. Ransom,
120 Broadway,
New York City.

MY DEAR SIR:

I have your letter of the 22nd and neither Mr. Chambers nor myself see any objection to inserting the condition mentioned therein to the conditions mentioned in my letter to you of the 21st in re subject of testimony of the witness McMillin.

Very truly yours,

ELY NEUMANN,
Assistant Counsel.

1335 The Master: Upon the stipulation expressed in this correspondence the testimony of Emerson McMillin, given in the case of the Consolidated Gas Company will be copied into this record.

The testimony of Emerson McMillin, above referred to, is as follows:

EMERSON McMILLIN, called as a witness on behalf of the complainant, being duly sworn, testified as follows:

Direct examination.

By Mr. Ransom:

Q. Mr. McMillin, where do you reside?

A. Darlington, Ramsey, New Jersey.

Q. What is your business?

A. 120 Broadway.

Q. What is your business?

A. What is my business?

Q. Yes.

A. Well, banking and public utilities, dealing in securities, and farming.

Q. Are you connected with any companies or corporations engaged in the purchase, management and operation of public utilities and if so, what?

A. Yes, I am the senior member of a banking firm that deals in securities, and chairman of the board of a holding company that operates plants.

Q. That is the banking firm of Emerson McMillin & Company, you are the senior member of?

A. Yes.

Q. And you are chairman of the Board of the American Light and Traction Company?

A. Yes, sir.

1336 Q. How long have you been in the business in New York City?

A. Since the middle of 1891 in New York City.

Q. And how long before that elsewhere?

A. Well, it is 52 years since I began the management of companies.

Q. Have you had occasion in that capacity to become familiar with the management and operation of public utilities including gas companies?

A. Fairly so.

Q. That has been your business?

A. That has been my business, yes.

Q. The utilities, principal kinds, owned by the American Light & Traction Company or other companies in which you are interested include gas and electric light and street railways?

A. Yes, sir.

Q. In what portions of the United States are gas works for the supply of gas to the public also controlled or operated by you?

A. In the States of New York, New Jersey, Michigan, Ohio, Missouri, Wisconsin, Colorado, Texas, Providence of Quebec, Canada.

Q. State of Alabama—you have some properties in Alabama?

A. Yes.

Q. Have you personally bought and sold gas companies and gas properties?

A. Yes, sir.

Q. One or more in each of the states that you have mentioned during that time?

A. Yes, sir.

Q. Are you familiar with the returns expected and usually realized by investors in other classes of business than gas corporations and public utilities in New York City and its vicinity?

1337 A. In other than public utilities?

Q. Yes.

A. Fairly so.

Q. That is, you deal in other kinds of stock personally?

A. Yes, sir.

Q. And your work for your banking firm brings you in contact with investments in other than public utility properties?

A. Yes, sir.

Q. To what extent would you say that you do deal in other than public utility stocks, personally, how much a year, what volume?

A. Usually I personally deal in three or four million dollars' worth of securities a year. The firm—I cannot say very much more than that, but the percentage of the two, I don't know about that.

Q. Many of these stocks in which you deal are stocks where the dealings are conducted on the stock market?

A. Yes, sir.

Q. Dividend paying stocks?

A. No other kind.

Q. Based on current market quotations and upon prices paid by you from time to time for stocks in which you would deal, what would you say is the basis of return represented by prices paid for such stocks?

Mr. Chambers: I object to that *is* irrelevant, incompetent and immaterial and not the subject of expert testimony. That is a question which the Court has to determine in this case, it is a question of law which the courts have determined in other cases.

1338 The Master: I will overrule the objection at this time and entertain a motion to strike out at the close of the entire case.

Mr. Chambers: Exception.

A. What is the question?

Q. Based on current market quotations and on prices paid by you from time to time for these stocks in which you say you deal, what would you say was the basis of return represented by the prices paid for such stocks?

A. Other than public utilities?

Q. Yes.

Mr. Chambers: I make the further objection that the question is too indefinite and too general and too uncertain, and does not relate to any particular property, or any particular stock, or any particular company, or any particular locality.

The Master: Objection overruled.

Mr. Chambers: Exception.

Q. Other than public utilities, what would you say?

A. In railroad securities the earnings of the companies—I have no means of knowing and pay no attention to those, but the dividends will average more than eight per cent. With the industrial companies, on the price which they are purchased on, about nine per cent.

Q. Are you familiar with the selling price of bonds and stocks generally of corporations furnishing illuminating or heating gas to the public?

A. In a general way, yes.

Q. Are you familiar with the rate of return expected and usually realized by investors in gas property?

1339 A. The rate of return of course—

Mr. Chambers: That calls for yes or no I take it.

Q. That is over and above operating expenses?

Mr. Chambers: Does that call for the rate?

Mr. Ransom: No.

Q. The question is are you familiar with it?

A. Yes.

Q. Are you familiar with the conditions of risk attending investments in operating gas utilities in this city and vicinity?

A. Yes.

Q. According to your own experience and the knowledge that you have acquired in the banking and public utility business, what is the rate of return usually expected and realized by investors in gas properties?

Mr. O'Brien: I object to that as incompetent, irrelevant and immaterial. This is a subject that cannot be measured by the opinion of an individual of the experience of the witness.

The Master: You make the same objection, Mr. Chambers?

Mr. Chambers: I make all the objections I made before to the other question, including that it is indefinite and uncertain, and the other grounds.

The Master: Objection overruled.

Mr. O'Brien: Exception.

Mr. Chambers: Exception. You will entertain a motion to strike out?

Mr. Ransom: I may say that that form of question is based on the Supreme Court ruling in a prior case.

1340 Mr. O'Brien: While it may be competent for a duly qualified expert to tell the Court what during a given period has been the average rate of return, I do not think it is competent to give opinion testimony on this subject. It is a question as to locality. This state has fixed a fair rate of return, there is a legal rate of interest, and from that the Court will draw its conclusion. The ruling of the United States Supreme Court has not as yet been upset, and I say that in spite of the obiter dictum in the Lincoln gas case.

The Master: When did the State of New York fix a legal rate of six per cent?

Mr. O'Brien: It has always been, so far as my memory goes, the legal rate of interest, and anything more is usurious. In the Lincoln gas case they took cognizance of the fact that in the State of Nebraska the legal rate of interest was eight per cent. I say that if they drew a conclusion as to that in the State of Nebraska, we have the right as to this particular locality to base our own deductions upon what this state up to the present time has declared to be a legal return.

The Master: I will not hear any argument at this time; I will hear argument when the time comes for a motion to strike out.

Mr. O'Brien: My point is that this is not a subject for opinion testimony.

The Master: Objection overruled.

Mr. O'Brien: Exception.

A. Expectations the last two or three years have not been
1341 realized.

The Master: Based upon the sales of that kind of securities, upon what basis are prices realized for securities?

Mr. O'Brien: Your Honor will permit me, with due deference, to object to your question, on the ground that the sale of securities is, in no way a measure of the return upon a piece of property.

The Master: It bears somewhat upon the expectation- that Mr. McMillin says have not been realized.

Mr. O'Brien. Exception.

Q. What rate of return do you say the net earnings should represent in this locality?

A. There would be no occasion for any one to pay more than on a ten per cent basis. You can buy easy enough on those returns.

Q. What is that?

A. A ten per cent basis of earnings on the value of the property.

Q. Your opinion is that a figure of ten per cent in this locality—

A. That would be cheap judging from the returns on my own securities.

Q. Would it in your judgment be possible to interest investors in the acquisition or establishment of a public utility enterprise such as a gas company in the city or vicinity of New York upon a lesser expectation of earnings than eight per cent upon the value of the property?

Mr. O'Brien: I make the same objection, and I call your Honor attention to the fact that we are getting into the realm of Wall Street now, and it hasn't any place in this case.

1342 The Master: Objection overruled.

Mr. O'Brien: If we are going to—

The Master: I have ruled on it, don't let us waste any argument at this time. I will take Mr. McMillin's testimony, and I am going to hear a motion to strike out when all the proof in this case is in, I am not concluding myself by allowing the testimony in, as whether I will let it stay in or not.

A. What is the question?

The Master: Could you interest people in investing in security of a gas plant at less than eight per cent?

The Witness: In the establishment of a gas company you said?

Q. Acquisition or establishment.

A. In one established or in establishing one?

Q. In establishing one, or in buying one?

A. Well, in establishing one of course you have got to take everything into consideration. In one that is already established there are bonds, and first preferred, and possibly second preferred, and common, and they all have a different value, so that you could answer one question is general.

Q. But putting the question in the form in which I did with respect to the possibility of interesting investors in the acquiring the establishing of a gas enterprise, is it your judgment that investors could be interested in furnishing the money for such a purpose less than an eight per cent basis?

Mr. O'Brien: I object to that as incompetent, irrelevant and immaterial, based on assumptions that are not in this case, and that has no vital part in a rate case. On the further ground that it is leading.

1343 The Master: Objection overruled.

Mr. O'Brien: Exception.

A. No.

The Master: You mean by that, Mr. McMillin, that you would be able to interest capital in a gas enterprise unless the gas company could show a net earnings of eight per cent?

The Witness: Yes.

Q. On the value of the property?

A. On the value of the property.

The Master: That does not mean that they would insist on eight per cent on their bonds?

The Witness: That does not follow.

The Master: Or on the first preferred stock.

The Witness: No.

The Master: Take a gas company in operation which showed

it was only earning on its invested capital actually in less than four per cent, could you sell the bonds of the company at all?

The Witness: No.

Mr. O'Brien: I object to the question of the Master, with due deference, on the ground that it is not the measure, that capitalization is not the measure of the value.

The Master: I said invested capital, actually invested capital, the cost of its property.

Mr. O'Brien: My objection is just as valid whatever way your Honor puts it.

The Master: What I am trying to get at is this, Mr. McMillin, and I take it that that is the gist of your testimony here—what
1344 would a gas company have to earn to make its securities marketable at any price, having mind that prices will vary as you have indicated between the bonds, and the first and second preferred, and the common stock, what would be the basis that it would have to earn to make its securities marketable?

Mr. O'Brien: I object to that.

Mr. Chambers: I object to that.

The Master: This is all taken subject to the objection and exception.

Mr. O'Brien: We are dealing with a false basis, your Honor.

The Master: Maybe we are. I am inclined to agree with Mr. Chambers that this is not a matter of expert testimony at all, but I am going to take it at this time subject to a motion to strike out.

The Witness: It would have to earn ten per cent to make the enterprise a go.

The Master: You would have to earn ten per cent to make the enterprise go?

The Witness: Yes.

Mr. O'Brien: You mean initiating an enterprise?

The Witness: The enterprise would have to show the possibility to earn ten per cent.

Mr. Ransom: I object to that.

Q You mean to start?

The Master: I won't take that.

The Witness: On the value of the property.

Mr. O'Brien: I will have to go over this ground later. You might as well settle it now.

1345 The Master: I am going to do it myself now. Take a going concern that wanted to sell some bonds, and it only showed a return of four per cent, would it be able to sell its bonds?

Mr. O'Brien: Same objection.

The Witness: No.

The Master: Or five per cent?

The Witness: No.

By the Master:

Q. Well, what would it have to show investors who would be willing to buy first lien bonds that it could earn and was earning?

A. The percentage of bonds compared to the value of the property of course—

Q. Would bear on it?

A. Yes.

Q. But the investors want to know that the interest is going to be paid on their bonds?

A. They must know that.

Q. What would they look at to see what the net return was, what the company's earnings were, what would the minimum be? What would your minimum be as a banker to underwrite the bonds?

Mr. O'Brien: I object to that.

The Witness: To underwrite the bonds?

Q. Yes.

A. That would depend. If it was an established company—

Q. I am talking about an established company?

A. The surplus that it had and the percentage of bonds to stock. There are lots of things that must be taken into consideration. If you had a property in a large city with a good franchise and did not have out more than half its value in bonds, 1346 could probably sell them on, at the present time, a six one-half or seven per cent basis.

Q. Let us analyze that a minute. Let us assume a company is offering half of the value of its property in a six per cent bond and it has a surplus of a few million dollars, and the company shows that it is not making any money at all, but losing money, could it sell the bonds?

A. No.

Mr. O'Brien: Exception.

Q. That there is a surplus, it is only half the value of the property.

A. You could not sell the bonds for half the property on that basis of a proposition.

Mr. O'Brien: Will your Honor permit me to note my objection to each one of your questions, and take an exception to your ruling?

The Master: Surely.

Q. Let us assume a company that has an amount of surplus, a surplus—in other words, that its capital is intact—and that it is offering bonds at one-half the value of its property, or the cost of its property, either way you like, and it is not showing any earnings, will you be able to sell the bonds?

A. If the stock is earning how much?

Q. Nothing?

A. Nothing?

Q. The company is earning nothing.

A. There wouldn't anybody want them.

Q. Well, at what return, what net return would you insist on before you would underwrite these bonds, in the case I have suggested?

1347 Mr. O'Brien: Same objection. It is not clear whether you are addressing Mr. McMillin now as a banker or as a consumer.

The Master: I am addressing him as a banker, and a man who is dealing in securities and knows what he can buy and what he can sell, and he is not underwriting bonds unless he knows he can sell them.

Mr. O'Brien: Well, a further objection lies to the fact that your Honor does not make it clear whether you are talking now about a company to be installed.

The Master: Oh, yes, I have made it perfectly clear.

Mr. O'Brien: It is further vague, because you do not say whether the company has got a monopoly in a rich territory, or whether it is going into virgin fields.

The Master: I am going to take everything you want me to take, and I have taken some of them. I am going to take a monopoly, and I am going to take an established business, and I am going to take every possible advantage that you can have in a gas company that I am talking about, and I am going to take as low a percentage of its property as you care, and as fair a return as you like, will you be able to sell the bonds if the company is losing money on the sale of its gas?

The Witness: No.

Mr. O'Brien: I will take an exception.

Q. There is a point at which you would want to see some percentage of earnings by the company?

A. Exactly.

1348 Q. What percentage, I would ask, assuming a monopoly and every other advantage?

A. Assuming that there is not more than half the value of the property in bonds, the stock ought to earn ten or twelve per cent as representing the other half.

Mr. O'Brien: Your Honor, I must assert to you just——

The Master: I must insist that I do not have any argument now. You will have your opportunity on a motion to strike out.

Mr. O'Brien: Well, will you wait a minute until I show you where you are veering away from the proper moorings?

The Master: No. Will you please stop? I am going to give you the opportunity on your motion to strike out.

Mr. O'Brien: I will stop if you tell me to stop. I must stop and note my exception.

The Master: I will give you the opportunity to move to strike it out.

Mr. O'Brien: What is the use of putting it on the record?

The Master: Because I want it.

Mr. O'Brien: The only way in which this gentleman could be

called is to tell how much money is earned in New York in every line of endeavor.

The Master: Stop it. Next question. I am talking about a New York gas company with a monopoly.

The Witness: Yes, practical monopoly.

Q. With a practical monopoly, or a complete monopoly. Does it make any difference if you have a complete monopoly, if it is losing money on the sale of gas?

1349 A. There would not anyone want your securities, of course.

By Mr. Ransom:

Q. Are you, Mr. McMillin, familiar with what has taken place recently with respect to the Brooklyn Union Gas Company's bonds?

Mr. O'Brien: Same objection, your Honor. Now you are trying to prove one case by trying another.

The Master: I won't take that. There may be some special circumstance, there may be certain manipulation of bonds, or manipulation of stock. I will take his general statement.

Q. Mr. McMillin, has the cost of money for public utility purposes increased or decreased in the past few years?

Mr. O'Brien: I object to that as incompetent, irrelevant and immaterial.

The Master: Same ruling.

Mr. O'Brien: What the bankers can do with money in making it high or low, expensive or cheap, hasn't any part in this rate case, your Honor.

The Master: Same ruling.

Mr. O'Brien: Exception.

Mr. Chambers: Exception.

Mr. O'Brien: We have had the evidence of what they can do recently.

The Master: I have had that for many years.

Q. Would you say it has increased very largely?

A. It has increased, yes, from year to year.

Mr. O'Brien: Same objection and exception.

1350 Q. Do you have occasion to keep in close touch with the cost of operating gas properties owned by you and by the American Light & Traction Company in various parts of the country, including New York and vicinity?

Mr. O'Brien: Same objection.

The Master: Objection sustained. I do not think I will take that. Objection sustained.

Mr. Ransom: Well, you don't think you will take exactly what

The Master: I won't take testimony as to what other gas plants in the country are doing.

Mr. Ransom: I am not going into that.

The Master: That is, whether it costs more to run gas plants somewhere else. I am dealing with one gas company here in one locality.

Q. Mr. McMillin, do you make it your business to keep in general touch with the trend of cost of operation and of the prices of the commodities which are used in operation?

Mr. O'Brien: Same objection. He has not been qualified here.

The Master: Objection sustained.

Mr. Ransom: Exception.

Q. Would you say, Mr. McMillin, that the unit cost of operating gas properties is greater or less at the present time than it was five years ago?

Mr. O'Brien: Same objection.

The Master: Same ruling.

Mr. Ransom: Exception.

The Master: You need not ask any more questions on that line. I won't let this witness testify.

1351 Mr. Ransom: I wish to show by this witness, in the first place, that there is at the present time a higher level of prices with respect to labor and materials used in the gas business and necessarily used and that for reasons which the witness will state, this condition represents a higher and a permanently higher level of prices, at least for a long period of time.

The Master: I won't take his testimony on that.

Mr. Ransom: I think he is one of the best qualified men in the country. If your Honor thinks that you have had enough on that score so that it becomes merely cumulative——

The Master (interrupting): I won't take this witness's testimony.

Mr. Ransom: Your Honor will allow me an exception.

The Master: Yes.

Cross-examination.

By Mr. Chambers:

Q. Mr. McMillin, I understood you to say that in order to market bonds of a gas company in the City of New York, you were of the opinion that the net earnings on the stock ought to be ten or twelve per cent?

A. To market them at some particular price?

Q. Well, do you think you could not market them if the stock earned net eight per cent?

A. Market the bonds?

Q. Yes.

A. A percentage of the value of the property, yes.

1352 Q. That is a pretty good per cent, eight per cent?

A. Eight per cent?

Q. Net?

A. Net earnings?

Q. Yes.

A. Yes.

Q. Now, supposing it was seven, do you think you would have any trouble in marketing them then?

A. I think you could not market them at all.

Q. At seven?

A. No, not now.

Q. Then between seven and eight you fix a line of demarkation, do you?

A. I think that if a stock was paying eight per cent dividend, you could market bonds, but usually when it pays eight per cent it is earning ten or twelve per cent, if it is a well managed company.

The Master: I don't think Mr. Chambers understands the distinction between a stock getting the eight per cent and earning ten or twelve per cent.

The Witness: It is a good deal different.

The Master: You better explain to him.

Q. Suppose it was earning eight per cent on the stock——

The Master: What do you mean now, earning it or getting it?

Mr. Chambers: Meaning that, just what I am saying, the net earnings.

The Master: Based on that, what do you figure the stockholder would get out of that eight per cent?

Mr. Chambers: Why, eight per cent on par.

1353 The Master: No. I knew you did not understand it. A stock will earn a great deal more, it must earn a great deal more than it pays its stockholders. In other words——

Mr. Chambers (interrupting): I don't care what it pays. I did not reach that question yet. I am asking if he could sell these bonds if the stock was earning eight per cent. They may not pay anything. What difference does that make?

The Master: Have you got the question that Mr. Chambers now has in mind, earnings as distinguished——

Q. If a company was earning net eight per cent on its stock, could you then sell its bonds?

A. Its bonds would not be desirable, earning eight per cent, unless they were of a high price bond, someone might take them for the possible high rate of interest.

Q. Suppose it was earning ten and paying eight on the stock, then would you have any trouble?

A. In selling at what price, the bonds?

Q. The bonds at par, say?

A. Well, at what rate of interest?

The Master: That don't interest Mr. Chambers.

Q. Say four or five per cent?

A. There would not anybody have them at all.

Q. Now they would not?

A. No.

Q. A few years ago they would?

A. Yes.

Q. They were very desirable?

A. Yes.

Q. Why is that situation prevailing now?

A. Because money is high.

1354 Q. Money is high?

A. Yes.

Q. On account of the war, isn't it?

A. Money is high and——

Q. Isn't it on account of the war?

Mr. Ransom: Let him answer.

The Master: Let him answer.

The Witness: Money is high, and affairs are so uncertain. We don't know whether we are going to make the interest on these things next year or not.

Q. Times are normal, aren't they?

A. Now?

Q. Yes.

A. Normal.

Q. Abnormal?

A. Abnormal, absolutely, everywhere.

Q. Everywhere, everything, isn't that so?

A. Absolutely.

Q. In all your vast business it is abnormal?

A. Absolutely.

Q. Wages are abnormal, is that right?

A. Abnormal, yes.

Q. Prices, moneys, everything is abnormal?

A. By comparison only.

Q. What?

A. By comparison, in comparison with pre-war periods.

Q. Have you ever in your experience known of such abnormal times as now?

A. Yes.

Q. When?

A. After the Civil War.

Q. How does the present check up with the Civil War
1355 times?

A. Well, my horizon of observation was smaller then than now. I can only make a fair comparison.

Q. How old were you then?

A. I was old enough to observe four years, three months in the Civil War.

Q. Conditions were abnormal then, weren't they?

A. Absolutely.

Q. But they leveled out to normal conditions after a little time, didn't they?

A. Yes, but now——

The Master: Well, were the low prices again abnormal when they got very low?

The Witness: When you get the low price, it was abnormal instead of the high prices being abnormal, and I fear, and I say I fear because it is pretty hard to tell people now that the abnormal may be the low prices after we have an abnormal condition heretofore, it would be a low price, that the abnormal condition of today compared with pre-war periods will be the normal basis for a long time.

Q. Did you ever know money to be so high as it was loaning recently, on call at thirty per cent?

A. Oh, yes, I have seen it loan at seventy-five per cent.

Q. When, in 1875?

A. '75.

The Master: He said he saw it loan at seventy-five.

Q. When was that?

A. 1892 or 1893.

Q. 1892 or '93?

A. Yes.

1356 Q. We had a panic?

A. Yes.

The Master: Why, call money went up to nearly that in 1907, didn't it, in the fall of 1907, in October?

The Witness: Yes. I do not think it went much over thirty per cent.

The Master: In October, 1907, it went pretty high, didn't it?

The Witness: It was pretty high, but I do not think——

Q. Not so high as that?

A. More than thirty per cent, I should say.

Q. In 1907?

A. I should say so, yes, but I remember in 1893 it was loaning up to seventy-five per cent.

Q. Those were panicky times?

A. Absolutely.

The Master: Well, it is the high money that makes it panicky, isn't it?

The Witness: What is that?

The Master: It is the high cost of money that makes it panicky, isn't it?

The Witness: Panics make high call money. Whether they do—I don't know which way to put that.

Q. Would you say, Mr. McMillin, that the financial world was nervous just now because of the abnormal condition?

A. The abnormal conditions, that the world is nervous?

Q. Financial world?

A. I am afraid that most people are. I am not greatly troubled myself. We see these things occur every decade.

1357 Q. Now, I want to ask you another question. If you were about to market some bonds upon a gas company, established gas company, in the City of New York, and it appeared that that gas company earned ten per cent net on its stock, we will say, for the first question, covering a period of ten years, but during two of those ten years it fell as low as say, two per cent, but the average of the ten years was ten per cent, so that when you were all through it averaged ten per cent every year, the lean with the fat, would you then say that you could market those bonds?

A. I do not think you could market bonds under those conditions, if the last two years is to guide.

Q. Put the last two years then in the middle?

A. Oh, that would be a different thing, but the two years now would indicate conditions that might pertain to some time, and therefore nobody would want the bonds if the company was earning only two per cent.

Q. Even though the average was ten per cent?

A. Even though the average was twenty per cent.

Q. Even though the average was thirty per cent?

A. Yes.

Q. As high as thirty? Supposing the gas company made a net of thirty per cent?

A. Yes.

The Master: In days gone by?

Mr. Chambers: So that the average was thirty per cent.

The Master: And the two years now—

Mr. Chambers: So that the average was thirty per cent, with the good years and bad, what do you say about that?

1358 The Witness: Then it came down in the last two years to two per cent?

The Master: Yes.

The Witness: I would not want the bonds.

Q. Suppose it came down to four per cent in the past two years, during these abnormal times it made four, but the average was still ten, you could market those bonds, then, couldn't you?

A. Not easily.

Q. But you could market them, if they could make four per cent during these abnormal times, so that the average was ten, that would show they were in pretty good condition, wouldn't it?

A. Not in the last two years, if it came down to four per cent.

Q. You would not say so?

A. These abnormal conditions are likely to obtain, in the eyes of bankers and people generally, for some time.

Q. How long?

A. That is a hard question to answer.

Q. There can't anybody answer it, can they?

A. There can't anybody answer it, but a good while.

The Master: By that you mean, Mr. McMillin, four or five years?

The Witness: Yes, I should say five years. We are paying every month or so higher wages.

Q You are paying what?

A Higher wages. Wages go up, up, up, ever since——

Q Is not that because the cost of living is high?

A The cost of what?

Q Because the cost of living is high?

1359 A That is the basis of the claims, at any rate. We are paying it because we cannot help it.

Q Suppose the cost of living goes down.

A The cost of living will go down and the condition of the laboring man will be better. The price of labor will not go down appreciably for many years.

Q That is your opinion?

A That is my opinion and my desire.

Q It is your desire?

A And my desire, yes, sir.

Q That it will not?

A Yes.

Q Well, your desire may not be realized?

A That is right.

Q It is a guess, is it not?

The Master: Why of course it is a guess. Every prophecy is a guess.

A Yes, it is all a guess.

Q Is eight per cent a fair return, do you say?

The Master: What do you mean by return?

Mr. Chambers: Wait a minute; I have not finished my question.

The Master: But do not let us get mixed up on those terms.

Q Is eight per cent, net eight per cent on the stock of a company a fair return?

Mr. Ransom: I object to a question like that. You do not figure that in percentage on stock.

The Master: The question is not clear, in view of the witness's testimony that there is a good deal of difference between a stock earning eight per cent and a stock receiving eight per cent dividends. I want counsel to make it perfectly clear whether he is talking
1360 about the dividend payments or the stock earnings?

Mr. Chambers: I am talking about earnings all the while. They do not have to pay their stockholders, of course.

The Master: Mr. McMillan, is eight per cent as an earning on the stock a fair return to the company?

The Witness: Knowing that I can buy stock on the basis of twelve per cent dividends, not earnings, I would not want to pay for my stock at eight per cent.

Q That is the best answer you can give me to that?

A That is a practical one. I can go out and buy lots of stock at a twelve per cent dividend basis.

Q So you would not care to invest in one earning eight per cent on its stock?

A. I would not care to invest in an eight per cent stock.

Q. Supposing a gas company were paying eight per cent on their stock right along through the present period, would you have any trouble in marketing those bonds?

A. It might be paying eight per cent out of surplus.

Q. Would that be a good policy?

A. We know companies pile up surplus for just such occasions as this, and it continues to pay eight per cent although it was not earning it.

Q. Is it not fair to assume that all companies do pile up a surplus for abnormal conditions like this?

A. Yes, they ought to.

1361 Q. They ought to?

A. Yes.

The Master: How long does surplus last if they do not have any earnings at all and pay the same rate of dividends?

Mr. O'Brien: That has a pessimistic tone.

The Master: That surplus would not last very long, would it?

The Witness: It would not last very long.

The Master: Do not waste any more time on this. They are pure simple business propositions. The only point I was willing to take Mr. McMillan's testimony on—and in that he is more expert than any of us—is what the financial world figures a stock must earn to make its securities salable; in other words, what a gas company must earn to make its securities salable. Mr. McMillin's testimony is that it should earn, not pay dividends, but should earn a net earning of ten to twelve per cent. That is your testimony, is it not?

The Witness: Yes.

Mr. O'Brien: That is Utopia you are in now, your Honor. He has not given the whole range of investment and investment securities. There are billions of dollars out now and they never had that to invite them in or to lure them in.

The Master: Maybe you can get it. I will give you a few minutes to see what you can do. Outside of that, Mr. Chambers, Mr. McMillin's testimony is intensely interesting and I am glad to hear it, but I do not think it adds anything to this case, because it is a matter that any intelligent man who follows the trend of events
1362 in the world and who has studied economic conditions at all can tell probably with as great certainty as Mr. McMillin, as to what the future will bring. Isn't that so—it is a pure guess?

The Witness: Oh yes, it is a guess. Yes, sir.

Q. Do you own any stock in the Consolidated Gas Company?

A. No, sir.

Q. You are not interested in it in any way?

A. In no way at all.

Q. These corporations that you mentioned, the one in New Jersey, what corporation is that you are interested in?

A. Long Branch and along the coast down there.

Q. Long Branch?

A. Yes.

Q. How much are you earning over there on your stock?

The Master: I will not take that.

A. We are paying eight per cent dividends now.

The Master: I will not take that, Mr. McMillin, because that will not help us in this case. It might well be that all of Mr. McMillin's companies are making the same complaint that this company is making, or it may be that owing to a lack of restrictive legislation, or other things, they are making a great deal of money. It does not help us here at all.

Q. Are you connected with the Public Service Gas Company of New Jersey?

A. I knew of it and knew officers of it.

Q. You have not any stock or bonds in it?

A. I have not any stock.

1363 Q. You are not an officer of it?

A. No.

Q. Did you mean that you are a director of all these different companies in these different states?

A. How is that?

Q. You are a director of gas companies in all these different states?

A. I mentioned the states there where we have had companies, but we do not have them all now. We probably have fifteen or eighteen.

Q. What do you do, you underwrite, do you?

A. What?

Q. You underwrite public utilities?

A. Not for a long time.

Q. Did you underwrite the Bronx Gas & Electric Company?

A. The Bronx?

Q. Yes.

A. No.

The Master: Is that all, Mr. Chambers?

Mr. Chambers: That is all.

The Master: Mr. O'Brien, do you want to ask him something?

Mr. O'Brien: Yes.

The Master: Have in mind, Mr. O'Brien, that the only point I am accepting Mr. McMillin's testimony on is his statement that a public utility having a practical monopoly, in order to market its securities, being a going concern, ought to show a net earning on its capital or investment—that is the actual cost of its plant—of from ten to twelve per cent. That is all that it amounts to.

Mr. Ransom: Of course, as to your limitation of the witness's testimony the complainant excepts. We say that concerning 1364 ing the matters to which he has testified and concerning the other matters to which he has not been permitted to testify, he is well qualified and—

The Master: I am not questioning Mr. McMillin's qualifications.

Mr. Ransom: Certainly as to the matters to which he has testified, his testimony is pertinent to the issues, highly probative, and we are entitled to the full benefit of it.

The Master: There are some points of his testimony that I shall accept his statement on, namely, the opinion of bankers as to the abnormality of the times; because that was brought out by Mr. Chambers and not by you. I am not going to let Mr. O'Brien cross-examine him on something that Mr. Chambers brought out. The point of my statement to Mr. O'Brien is that all I am going to let him inquire about is Mr. McMillin's statement that a company of the kind we are discussing ought to earn ten to twelve per cent.

Mr. Ransom: I wanted to show on the direct that they present level of prices, although abnormal compared with what went before the late war, is normal now and will be for a long period.

The Master: I did not let you show it and Mr. Chambers showed it himself. Why do you complain?

Mr. Ransom: I am not complaining.

Mr. O'Brien: I am going to complain before I start—

The Master: You always do.

Mr. O'Brien (continuing): To your Honor placing one of
1365 these big Hindenburg walls about what I am going to ask on cross-examination.

The Master: If you think a protest from you is going to get you through that wall, you are wrong; the wall is going to stay there.

Mr. O'Brien: When I proceed to cross-examine a witness—and it is not with Mr. McMillin alone, but with pretty nearly every witness I examine—you proceed to outline for me just how far you are going to let me go, before I tell you how far I wish to cross-examine him. That is what I am protesting against.

The Master: And I outline it this time and that outline goes and will stand.

Mr. O'Brien: Questions and answers are on this record, and I am going to assume that I have the right to cross-examine him on anything that bears upon what was brought out on the direct, irrespective of what is in your Honor's mind as a salient matter or a salient statement, and what is not.

The Master: If I am in the position where I can limit the cross and control it, I will enforce the rule that I have just stated, that your cross-examination be directed to one point and no other. If you will not do that I will take the witness off the stand.

Mr. O'Brien: Your Honor can do as you see fit. I have no power to overrule you, you know. I am the attorney, you are the judge.

The Master: No, it will have to be for the higher court to do that.

1366 Mr. O'Brien: But still there is stuff put in here by Judge Ransom that you think does not impress you. It is in the record and Judge Ransom thinks it is impressive and he is going to impress the record with it, and I want to ask the witness about those same things.

The Master: Ask your questions. Your cross-examination will be limited to what I have outlined.

Cross-examination.

By Mr. O'Brien:

Q. Mr. McMillin, have you any stock in any of the subsidiary companies of the Consolidated Gas Company?

A. I have not.

Q. Have you any stock in the Standard Oil Company of New Jersey?

A. I have not.

Q. In the Standard Oil Company of New York?

A. No Standard Oil.

Q. Have you any relations in connection with any kinds of corporations with Mr. Nicholas F. Brady or Mr. William Rockefeller?

A. Well, I do not know whether I have stock in the same companies that they have, but I have no knowledge of being associated with them in any way. But I cannot know who the stockholders are of the various companies I have securities in.

Q. Will you say that you do not know that they have any connection with the companies in which you have stock?

A. I can say that I do not know that they have any connection with any company in which I have stock.

1367 Q. Have you any stock in any oil companies?

A. One.

Q. One?

A. Yes, one.

Q. Which one is it?

A. Pierce Oil.

The Master: If the witness is willing to state it, all right.

The Witness: I am sorry, but it is true.

The Master: What is the matter with Pierce Oil?

The Witness: It is going down.

The Master: So are others. I have some that is going down.

Q. The Standard Oil of New Jersey is not going down, is it Mr. McMillin?

The Master: Objection sustained. The question is not allowed.

A. I don't know.

Mr. O'Brien: Exception.

The Master: Well, the witness has answered he can't know.

Q. Are you not acquainted with the returns that the Standard Oil of New Jersey and the Standard Oil of New York are getting upon their investment?

Mr. Ransom: Objected to.

The Master: Objection sustained, and I direct the counsel's attention to the fact that if he has any other questions to ask bearing upon

the witness's interest in the litigation, his association or connection with the company or its subsidiaries, I will let him ask it; otherwise nothing but the question in the statement made by the witness.

1368 Q. Have you had any business relations in the last decade and a half with Mr. Rockefeller?

A. There are three or four Rockefellers.

Q. William Rockefeller?

A. No.

Q. Or any of them. John D.?

A. I have had no business relations with any of them.

Q. Have you had any banking relations with them?

A. No.

Q. Or with companies in which they are interested?

A. I have had correspondence with J. D., Jr., on industrial matters, particularly with his various schemes for bettering labor conditions, but that is the only connection I have had with any of the Rockefellers.

Q. Have you ever had any stock in either of the two Standard Oil Companies of New York or New Jersey?

A. Of the oil companies?

Q. Yes.

A. I do not think I ever had. But that is a pretty hard question, handling several hundred thousand shares a year, in fifteen, twenty or thirty years. It would be hard to remember, but I do not remember that I ever had any.

Q. You mean you are buying and selling all the time and you might have taken over some stock?

A. I might have had it; but I would say no, that I never had any in any of those companies.

Q. When you testified today in the cross-examination concerning return that might entice a banker to put his money out, invest it in gas companies, were you testifying as a banker, as one who is loaning money and underwriting bonds in corporations?

A. I was testifying as one that was familiar both with the purchase and sale and the operation of the properties and what they have done, and what they probably will do.

Q. Have you made a business of underwriting bonds in companies—gas companies?

A. Oh, not a business. No, not a business.

Q. Have you done it to any great extent.

A. No, I often have joined in it, though.

Q. In your day you have been a successful financier?

Mr. Ransom: I object to the question.

The Master: Mr. McMillin can admit it if he wants to.

Mr. O'Brien: I am trying to get the man's point of view, and I know Mr. McMillin will give it to me frankly if we go along together for a while.

Mr. Ransom: I think the question is improper.

The Master: I will allow it.

A. I have no objection to answering the questions at all myself.

Q. Mr. McMillin, I am not going to get into your income tax return, but you have been a successful man?

A. I have had good health, three meals a day and three or four suits of clothes a year, and I have been able to help my neighbors.

Q. And you have acquired some wealth?

A. Yes.

Q. You have gotten a big return on the moneys you have laid out?

1370 The Master: I will sustain an objection to that.

Mr. O'Brien: I want to get the witness's point of view. If he is just giving us the opinion of bankers in Wall Street, that is not the part we want.

The Master: Well, do not let us waste any time.

Q. In the investments generally speaking into which you have put your money you have never been satisfied with six per cent, have you?

A. Never been satisfied with it?

Q. Yes.

A. I am always satisfied with the conditions as they exist. I have never troubled about anything at all.

Q. You are a philosopher?

A. Yes, sir, in that respect.

Q. But where you put money out you have not put it in investments that show merely a return of six per cent?

A. No.

Q. You have looked for a more generous return than that, have you not?

A. Yes.

Q. You would want even ten years back a return of ten or fifteen per cent, would you not, putting any substantial amount of money in the business?

A. Not in operating on Wall Street.

Q. Talking now about a business concern.

A. The public utility business, yes.

Q. You would look for that much?

A. Yes.

Q. You always have looked for that much?

A. Yes.

1371 Q. From ten to fifteen per cent?

A. In Public Utilities.

Q. It would not interest you unless you did?

A. Not much.

Q. When you made your statement as to how much you would require as a banker underwriting bonds to be the showing of a return upon stock, you included there as one of the elements the relation which the outstanding bonds bore to the stock, didn't you?

A. I think so, yes, sir.

Q. One of the conditions you laid down was that there should be not more bonds outstanding than one-half the stock?

A. In reply to certain questions, yes.

Q. And that was a condition precedent to your admitting that there was anything like a fair return?

A. Yes.

Q. And as I understood it, you said that if the bonds were not more than one-half the stock, the outstanding bonds, that you would underwrite further bonds if the stock showed a return of eight per cent. Is that correct?

A. I don't think I said that.

Q. Am I in error?

A. If the stock showed a return of eight per cent?

Q. Yes.

A. No. I didn't say so. I might underwrite the bonds at a price. The price comes in all the time.

Q. Is it not a fact that bonds are underwritten at various prices?

A. Yes.

1372 Q. And they are underwritten on all kinds of concerns?

A. Yes, and various commissions, and all that sort of thing.

Q. And bonds are being underwritten every day, even during the past year?

A. Yes.

Q. In various concerns?

A. Yes.

Q. And they have been underwritten as to gas companies?

A. Yes.

Q. That is a fact.

A. Oh, yes.

Q. When you gave your answer a few minutes ago, did you have in mind just how many bonds, and the total aggregate amount outstanding of the Consolidated Gas Company there were?

A. I don't know anything about the bonds of the Consolidated Gas Company.

Q. That did not enter into it, the condition of the Consolidated Gas Company did not enter into your mind at all in making the answer to that question?

A. No.

Q. Why did you exclude that from your view?

A. I didn't know anything about it, I thought of those things about which I knew.

Q. Did you have in mind particularly the companies you have been interested in?

A. The companies I am interested in now and have been, yes.

Q. Is it fair to assume that what you had in mind is that it would not interest you, Mr. Emerson McMillin, unless the utility showed a return under the conditions that you have named?

1373 A. As a utility. Now, don't get the impression that I am a Wall Street broker. I am anything in the world from that. I buy no stocks even on Wall Street, on the Stock Exchange, except for investment. I may sell them again in a month, but I do not do

that kind of business, I have not made my money in Wall Street, I have made it from public utilities that I have operated.

Q. Well, you believe in the management of a public utility setting aside reserve, you have stated that, a surplus to take care of crises?

A. Yes.

Q. Rainy days?

A. Yes.

Q. Lean days?

A. Yes.

Q. A wise policy, isn't it?

A. I think so.

Q. That has been pursued by the companies in which you have been interested?

A. Yes.

Q. And the design is to bridge over the period when there may be great demands upon the utility?

A. You must have something above interest and above dividends. Any well managed company must set aside in some form or another, ordinarily surplus.

Q. Wouldn't you say it would be a wise thing for any public utility to undertake, as does the National Government, to spread the heavy burdens of a particular period over a long term in the future?

A. Yes.

Q. Now, Mr. McMillin, when you were giving your testimony you had in mind other forms of investment into which
1374 people's money is put in and around New York?

A. Yes, but they don't have to sell, at any rate they will sell on a lower basis of earnings.

Q. Let me ask, Mr. McMillin, if you will give us approximately the amount of money during the last two years that was put into United States bonds. It ran up into something like twenty-five or thirty billions, didn't it?

A. I think so.

Q. And the return to the investors on those bonds is only three and a half to four and a half per cent, is that correct?

A. The return net to me was about 1.43 per cent

Q. On the United States bonds?

A. When I paid taxes on them, yes.

Q. But there has been twenty-five to thirty billions invested in that form of security?

A. Yes.

Q. Do you know what the aggregate amount is that is invested in public utilities in the country at the present time?

A. Those statistics are frequently published, but they have not been fixed in my mind.

Q. That would not run above twenty-five billions, would it?

A. No, it would not run that high.

Q. You are acquainted with the market for United States bonds, are you not?

The Master: What has that to do with this?

A. I have known to my sorrow——

The Master: What has that got to do with this?

1375 Mr. O'Brien: I am sorry that your Honor does not see it. I hope before the end of the case that you will see it has some bearing.

The Master: will not allow the question.

Mr. Ransom: The taxing power of the United States Government——

The Master: No.

Mr. O'Brien: Now, we will hear the superman testify.

Q. Have you followed, Mr. McMillin, the returns for the last three or four years upon real estate in and around New York City?

A. No.

Q. Are you acquainted with it at all?

A. Yes, I own some.

Q. Do you know, or is it the fact that for three years practically every piece of property sold under foreclosure was bought in by the mortgagee?

A. No.

The Master: I will not allow that. I don't see how it is useful at all.

Mr. O'Brien: I assume that the witness was placed upon the stand here to show that the complainant company was entitled to as fair a return as the majority of lines of investment in and around New York?

The Master: I don't know anything about that; I know I am going to limit this cross-examination.

Mr. O'Brien: If that is not the point of the testimony then it should be stricken from the record.

The Master: I have told you what I understood the substance of his testimony is, and I will let you cross-examine on it. If 1376 there is no further question on it I will take the witness off the stand.

Q. Mr. McMillin, have you followed the bond market during the last year?

A. The bond market?

Q. Yes.

A. I have not had occasion to sell any in the last year.

Q. I mean have you kept yourself conversant with the bond market?

A. Oh, I look over the quotations from day to day, not otherwise.

Q. Just in a casual, cursory way?

A. Yes.

Q. You have not bought or sold many bonds during that time?

A. I have a good many hundreds of thousands, perhaps millions, in government bonds, on which I lost four or five points.

Q. But outside of that, no?

A. I have probably sold no bonds.

Q. When you stated that a banker would not care to invest his money in so and so under such and such conditions, you were speaking about an ideal situation, were you not?

A. I had in mind the present condition; it is not ideal to me.

Q. What I mean, Mr. McMillin, is you were picking out what would be a choice investment to lure the banker in?

A. No, I could not say that, because I have said that ten per cent of earnings ought to sell the securities.

Q. Well, you have looked down the bond market from day to day?

A. Yes.

1377 Q. And you have seen thousands upon thousands of bonds sold and bought where the conditions were not anything near as alluring as those you have pointed out in the questions and answers put to you by Judge Ran-om?

The Master: Where does that get us anywhere? You can buy and sell anything.

Mr. O'Brien: Your Honor, the witness has testified that you could not get money in. Now, he may mean that he would not put his own money into a concern unless it showed——

The Master: You are talking of one thing and Mr. McMillin is talking of another. Of course, if you and I and other poor simpletons go in and buy securities, and when we find that the company is not earning enough to pay interest, we are going to sell, and then the shrewd men in the street go and buy them from us.

Mr. O'Brien: I am trying to get where Mr. McMillin stands.

The Master: He is talking about advising you or me, if we were his customers and came to his banking office, whether we ought to buy some bonds of the X Y Gas Co., which is not earning interest on its bonds.

Mr. O'Brien: No, I didn't take it that way. He has in mind putting in quite a considerable sum of his own money. Isn't that so, Mr. McMillin?

The Witness: Yes.

Q. You were not talking about O. P. M.—other people's money—were you, when you gave your answer as to whether bankers would put their money in?

1378 A. I was speaking in general terms, general conditions as they exist today. I would not want to buy properties, and would not buy properties, public utility properties on a ten per cent basis today.

The Master: The banker, Mr. McMillin, the man who underwrites the bonds, expects to sell them to the public, doesn't he?

The Witness: Yes.

The Master: He won't underwrite the bonds unless he knows the public will buy those bonds, isn't that so?

The Witness: That is right.

The Master: So when you talk of what you would do, you have in mind whether you could sell those securities, isn't that so?

The Witness: Yes.

Q. Mr. McMillin, your statement as to what you would advise people to do was not predicated on what other people have done, say in the last decade? There have been thousands and millions of dollars' worth of bonds sold?

A. Yes.

Q. And they have been sold in concerns that did not yield the return that you have spoken about?

A. Oh, we don't know when we see a bond sold on the Stock Exchange, we don't know what the company is doing at all. It may be earning 25 per cent on its stock.

Q. Well, it represents invested money when it is a sold bond, doesn't it?

A. Bonds are supposed to represent invested money.

Q. When you speak of a return of eight or ten or eleven per cent, or whatever you determined to be fair, a satisfactory return, 1379 did you have in mind upon the original cost of the property?

A. Upon the value of the property. It may be the original cost or otherwise, but upon the value of the property with not more than 50 per cent of its value in bonds, and the other in stock. Now, the bond holder has got what he conceived to be a sure thing. He is content with seven or eight or six per cent, but the stockholder does not know whether he is going to have a dividend or not, and therefore the returns must show big in order to induce him to make the purchase.

Q. Because of the uncertainties with which his investment is surrounded?

A. Yes.

Q. And many men in putting in money do not go into the history of the company?

A. No.

Q. The amount of inflation there is, they don't go behind the return given to them by somebody who follows the tape, do they?

A. No.

Q. And the question of the history of the capitalization of the company would be a very important matter in connection with any investment that is under consideration?

A. There are many things that interfere or influence. For instance, we sold in one of our companies two years ago between two and a half and three millions of bonds. Now, the banking house that took those bonds and sold them, in their advertisements showed them on a basis of less than six per cent. There was no other company's bonds offered down that low. Now, in the first place that was a good company, and in the second place it was owned by the American Light & Traction Company, whose stocks have sold for 1380 many years above anything else in New York until last year.

Now, the fact that they owned that company made it possible to sell those bonds down that low. The men who took them felt that they were taking no more risk than they would with a government bond.

Q. Because of the reputation of the company?

A. Yes, and the dividends it had been paying.

Q. Its prestige established through many years?

A. For many years its dividends were 50 per cent on par.

Q. Then that past history influenced the present buyers, didn't it?

A. It is paying 30 per cent on par, and 15 per cent on the purchase price now.

Q. Are there many other companies that you belong to that have the same prestige and the same prosperity?

The Master: That is very interesting, Mr. McMillin, but we won't spend time to find out. I don't want an answer to that question.

Mr. O'Brien: We are gradually getting the viewpoint of the witness.

The Master: I think I have got his viewpoint.

Mr. O'Brien: If a man is making 50 per cent on his money, there isn't any reason why he should not run away from a public utility that pays ten per cent.

The Witness: 50 per cent on par might be only ten per cent on what it cost. It was selling for 400, for many years.

Q. If you were going searchingly into the question, say in order to advise a lady client, you would want to know the history 1381 of a particular company, would you not?

The Master: The question will not be allowed?

Q. How much the property originally cost?

The Master: The question is not allowed. How much do you say, Mr. O'Brien, a public utility corporation ought to earn, not pay its stockholders, but earn on the fair value of its property determined in the way in which you say it ought to be determined?

Mr. O'Brien: Your Honor, I can best answer that in a thoroughly hibernian way.

The Master: Well, give me the Irish of it.

Mr. O'Brien: When I say to you that public utilities should not expect any more than people in other lines of endeavor get—

The Master: What do you say is the average?

Mr. O'Brien: I don't suppose, from my knowledge of real estate in New York City, in which millions and millions of dollars are invested, and which is the foundation stone of this municipality, because it bears practically all the expense of running it, that it has shown more than 3 per cent or 2 per cent on the average during the last two or three years.

The Master: What do you say the Consolidated Gas Company ought to earn on the actual cost or value of its plant?

Mr. Chambers: How is that material? The question is, what rate is confiscatory. Isn't that all immaterial?

The Master: Not on the question of this cross-examination.

Mr. Chambers: Oh, but I mean in the case. We are dealing with a confiscatory rate.

1382 The Master: Counsel is challenging Mr. McMillin's statement that a public utility corporation ought to show earnings of 10 to 12 per cent. Now, the purpose of the cross-examination is

to show that Mr. McMillin is wrong about it. Now, if you agree that it ought to be 10 per cent say so. What do you say it ought to be?

Mr. O'Brien: I get your point. What I want to bring out from the witness, if he is able to tell us, is, what has been the average return shown by similar public utility companies throughout the country for the last three or four years.

The Master: I will not take that. I will let you ask Mr. McMillin what should have been the average throughout the country.

Mr. O'Brien: What does your Honor mean by that, what it should be? Of course a stockholder would say that it should be a whole lot of money, that he is entitled to everything he can get.

The Master: I don't think we need waste any more time on this. Mr. McMillin has given you his judgment, he has told you how he works it out. You don't get anywhere by asking him a lot of questions as to what may happen ten years from now.

Mr. O'Brien: Let me go on uninterruptedly for a few minutes and I will finish this.

Q. Now, Mr. McMillin, your statement as to whether you would put money into a concern that did not show a certain percentage on the value of the property was a personal viewpoint that you gave, that meant that you would not put it in?

1383 Mr. Ransom: Objected to as fully covered.

The Master: I will allow it once more.

Mr. Ransom: Exception.

A. Well, I would not put money in at those prices, because I can do so much better. Public utilities—this has not been brought out I believe—because of the hazardous character of the business must earn more to make them appeal to investors than other properties. The railroad securities that I own net me about eight and one quarter per cent. The industrials earn me nine per cent. The public utilities earn me a great deal more.

Q. In the ones in which you have invested?

A. Yes, and they ought to.

Q. And you have a choice collection?

A. Because they may become almost worthless. Prices everywhere have been fixed by franchise, and occasionally we find the public willing to correct them, but I think we have had only two or three, about three out of twelve or fifteen that have permitted us to increase the price above what we could do without their permission. In nearly all places we were already selling away below the ordinance when the war came on. We could go as far as the ordinance allowed us to go, and above that we could not. There are lots of companies that when they got up to the highest point they could go under their franchises still could not make it pay. In other words, if you get 10 or 15 per cent of a raise, and wages and material cost 100 per cent more, you cannot possibly make the two ends meet.

Q. Well, that has not been your experience in the companies in which you are interested?

1384 A. Well, our companies originally had less investment. That is the secret of our success.

Q. They were what?

A. We bought them for less money.

Q. You bought them cheap?

A. We bought them on a better basis.

The Master: I am not going into all this. The question is not allowed.

Mr. O'Brien: The witness has made a statement here as to returns that he is getting from certain lines of investment, and I think it should be brought out that that does not reflect the whole market by any means, is the wise selection and choice of a wise financier. Isn't that correct, Mr. McMillin?

The Master: The question is not allowed. I am going to stop this examination somewhere.

Mr. O'Brien: Exception.

Q. When you speak about this fair return that would attract investors, have you in mind the beginning of a new company in a new field?

A. Not especially so. It would apply in nearly the same degree to an established company.

The Master: Your answer to my question included a company that had a monopoly and was an established business.

The Witness: Yes.

The Master: And you said it should be ten or twelve per cent?

The Witness: Yes.

Q. Well, you have always had this same view as to the return, the minimum return of about ten or twelve per cent? I mean to say you had that in the last decade or two, you have always had that view?

1385 A. Yes, for many decades.

Q. Would you be influenced to hold a slightly different view where the monopoly is far reaching, as it is with the complainant company, in a great metropolis, with valuable franchises and the possibilities of no competition of any kind?

Mr. Ransom: I object to the question. There is no proof here of a monopoly. It is no more a monopoly than any other gas company.

The Master: I will allow it.

Mr. Ransom: Exception.

A. All these things influence the value of the stock. I only know about two companies in the United States that have an absolute monopoly.

Q. Which are they?

A. Waukegon, Wisconsin—

The Master: Assume for the purposes of the argument, Mr. McMillin, that the Consolidated Gas Company has an absolute monopoly in the City of New York?

The Witness: Well, I built a company here in the city some years ago.

Q. What company was that?

A. East River, with the same franchise they have today.

By the Master:

Q. What I am trying to get at, Mr. McMillin, so as to eliminate any question about it, I will assume, and would like to have you assume for the purposes of my question, that the Consolidated Gas Company owns all the stock of every other company on Manhattan Island. What would you say then? Would you say that the return ought to be less than ten or twelve per cent because of that?

1386 A. With the present conditions, no, I would not modify that. In ordinary times that sort of condition would influence the price.

Q. How low would you go then?

A. Well, I might say nine or ten, instead of ten or twelve.

Q. Now, I have taken the most complete kind of a monopoly, and you say in normal times you might go as low as nine or ten, but at this time you say ten or twelve?

A. Yes.

The Master: Now, Mr. O'Brien, that is Mr. McMillin's view.

By Mr. O'Brien:

Q. Would you look for your return upon the cost of the plant, the amount of the original investment?

A. The cost of the plant to me if I was buying it, or its value to whoever operated it. Not watered stock or anything of that kind.

Q. You have in mind a reproduction value?

A. No, I didn't have in mind a reproduction value, but you have got to put away something out of your earnings other than simply to pay dividends and interest.

The Master: Mr. O'Brien, I am going to limit the cross-examination. I don't think it is going to help us to ask any more questions.

Mr. O'Brien: I will be through very shortly, your Honor.

The Master: Well, you have got to be through shortly. I have limited the cross-examination now.

Q. Would you hold the same view were you asked the
1387 same questions as you have been asked this afternoon about a company in Chicago or San Francisco or Boston or Detroit?

A. All of those have their conditions that make every one different.

Q. You were given us a composite——

The Master: Wait a minute. Mr. McMillin has not finished his answer.

A. (continued). In San Francisco I would not want to own them at any price. In Chicago, not a great deal better. In Boston, very good. Detroit is the best city in America.

The Master: I am going to stop the cross-examination. You can go, Mr. McMillin.

Mr. O'Brien: Your Honor, I have not finished.

The Master: I have finished. You can go, Mr. McMillin.

Mr. O'Brien: I note an exception to your Honor's ruling.

The Master: It is too bad that I have to do that with every witness. I have absolutely got to cut the examination.

Mr. Chambers: May I move formally on the record to strike out Mr. McMillin's testimony upon the ground that it is immaterial and irrelevant; that the question here for decision is whether the company is or is not enjoying a return sufficiently large to say that the statute does not take away its property without due process of law.

The Master: Motion denied.

Mr. Chambers: Exception. That is to say, that if the return had been say 6 per cent covering a period of years, that then the statute cannot be said to be confiscatory?

1388 Mr. O'Brien: Your Honor, I join in the motion to strike out the testimony and note an exception to your Honor's ruling. I base it on the same ground as Mr. Chambers, on the ground that it was entirely improper, and as not being directed to any line of testimony approved by the courts in rate cases.

The Master: The stenographer will note on the record that Judge Ransom has here produced an original tax bill against the New York & Queens Gas Company, paid July 28, 1919, for additional capital stock tax, \$471, which I have no doubt is the tax bill testified to by Mr. Teele.

I do not think it is necessary to have Mr. Teele come back and identify it as the bill which made up his \$1,298 item, and I would like to hear whether there is any reason for not marking it subject to the same objections and the same rulings that I made when the \$827 voucher was marked.

Mr. Neumann: This is the receipt that the witness Teele said was missing, and that referred to the retroactive tax of 1918?

The Master: Yes, \$1,298.

Mr. Neumann: It goes to make up that amount?

The Master: Yes, I want to know whether that shouldn't go in subject to the same objections and the same rulings.

Mr. Neumann: Just give me a minute to confer with counsel.

Mr. Ransom: It is already in evidence.

Mr. Neumann: If it is already in evidence why put it in now?

1389 The Master: I wanted to have it marked separately, although it is already in evidence in conjunction with the other vouchers.

Mr. Neumann: The defendants make no objection to this being marked as an exhibit based on the reason that Mr. Teele is not now here to identify, but they do urge all the objections heretofore urged

against the one that was a companion to this and went to make up the total amount.

The Master: Yes, I told the stenographer to note the same objections and same rulings.

Now, mark this as a complainant's exhibit.

Mr. Vilas: It is already part of Exhibit 68.

The Master: Well, that was a batch of vouchers marked as one exhibit but I am having this marked as a separate exhibit.

Mr. Vilas: I understand, I just wanted that to appear.

Marked Complainant's Exhibit No. 99.

(At this point there was informal discussion while waiting for Mr. Chambers.)

The Master: Put down on the record that when we adjourn today we will adjourn to Thursday morning, June 3d, at 9:30 a. m. I will sit on that day from 9:30 to 1:00, from 2:00 to probably 6:00, then from 8:00 to 10:00, approximately six hours. I may sit after 10:00. I am going to finish this case.

On the 4th of June I am going to start at 9:30 and run as long as I can that day; then, beginning on Monday morning, the 7th of June I shall start at 9:30 in the morning and have three sessions until I finish this case. I shall be prepared to take, at the close of the testimony, any memorandum that counsel want to give me.

Mr. Ransom: Will you have oral argument?

The Master: No, the case is short.

Mr. Neumann: If you are going to keep us here at night, there will hardly be time enough to prepare a satisfactory memorandum.

The Master: You will have to do the best you can on it; you will have to get somebody from your office to assist you in preparing the memorandum.

As soon as the case is finished, I am going to prepare my report and I am not going to give over forty-eight hours for consideration because I am going to get through with the case.

Now go on with Col. Miller.

Mr. Neumann: Do you think we can formulate our objections in forty-eight hours, go through the record?

The Master: Yes, if you don't do what Mr. Chambers did in the Consolidated case, and Mr. O'Brien—and I guess yourself—except to very finding; that didn't help me any.

I do not understand that you are to except to my preliminary report; I understand that, having in mind what I intend to find, any suggestions that you think will be of benefit or something that you want to add, without in any way prejudicing either the report or any findings, is what is to be handed to me.

Now, out of the whole mass of stuff that the defendants gave me, there was just one single thing that I took, and that was a suggestion to the effect that the Rowland Appraisal did not contemplate service meters, or something like that, and I accepted that and put it in; it was the only thing that was of any use to me.

Cross-examination

By Mr. Chambers

Q. Mr. Miller, in your item of working capital, so far as the purchase of appliances is concerned, did you investigate to see how that was handled by the company?

A. Gas appliances?

Q. Yes.

A. You mean stoves and lamps?

Q. Yes.

A. No.

Q. You don't know whether the consumers pay a year in advance or not, do you—that is, if you made no investigation?

A. Are you speaking of the purchase of appliances or the sale of appliances by the company?

Q. I am speaking of appliances generally.

A. You used the expression "purchase" and your language sounded as though it meant purchased by the consumer or a sale by the company.

Q. Yes, I do.

A. Which do you refer to?

Q. Purchase by the consumer and sale by the company to the consumer.

A. No, I don't know just how they handled that.

Q. The rental of appliances, did you find that the consumers rented appliances?

A. Yes.

1392 Q. Did you ascertain how they paid for them, how they paid this rental?

A. No, I didn't investigate.

Q. You don't know whether they paid a year in advance or not?

A. No.

Q. Did you know it was the practice of the Consolidated to collect a year in advance for the rentals?

A. No.

Q. You didn't know that?

A. No.

Q. Would that have made any difference if these consumers paid the rental of these appliances a year in advance?

A. A difference in what?

Q. In your item of working capital.

A. No.

Q. You would have made it just the same?

A. Yes.

Q. Did you take into consideration consumers' deposits?

A. In what way? In the working capital, no.

Q. You didn't consider that at all?

A. Not as part of the working capital, no.

Q. I didn't say as part of the working capital; did you consider it in relation to the amount of working capital?

A. No.

Q. You didn't think that that was important?

A. No.

Q. Did you take into consideration the fact that the Consolidated Gas Company purchases oil and coal for this company?

A. No.

1393 Q. Makes the purchase?

A. I took into consideration the conditions not exactly as they are, as I specified. In taking the amount of working capital that I considered that this company would need, I took into consideration if it operated as an independent company and didn't have an older brother to lean upon.

Q. Now, having the Consolidated to lean upon, it would make a considerable difference, wouldn't it?

A. If the Consolidated company carries it, it does make a difference as I testified. The actual capital as shown by the company is only about \$140,000, and I estimated about \$165,000.

Q. Now, if the Consolidated Gas Company, an enormous and rich corporation like it is, as appears here that this is one of its children, this company could dispense with working capital almost entirely, couldn't it?

Mr. Ransom: Objected to as assuming a state of facts contrary to the fact.

Mr. Chambers: You mean it is not one of its babies, or children?

Mr. Ransom: All this demagogic description which is indulged in out of the air, there is on warrant for in this record.

The Master: The cross examination as to these things has been pretty broad—I will allow it.

Mr. Ransom: Exception.

The Witness: Will you please read the question?

Q. (Read.)

The Master: Strike out "enormous and rich."

1394 Q. But if it had this Consolidated to lean upon it would make a considerable difference, wouldn't it, it would not need near so much?

A. I stated it made a difference between a hundred and forty thousand and a hundred and sixty-five thousand.

The Master: Mr. Chambers, I am going to make this ruling; I shall not permit that line of cross examination. This last question was not objected to, therefore I cannot rule on it.

I shall rule that the consumers of this company are not entitled to the benefit of having the Consolidated Gas Company finance this complainant company without paying what it would otherwise have to pay for the return on working capital; the consumers, in my judgment, are not entitled to get something for nothing.

Mr. Chambers: Well, the Consolidated did actually loan this company money.

The Master: That is all right—they wouldn't have to loan it so much if the company had more working capital.

Mr. Chambers: Then you are disregarding what already appeared in the case.

Mr. Cummings: You are disregarding the actual facts.

The Master: I am going to rule that in arriving at the return which this complainant company is entitled, I shall include an amount for working capital for this company as a separate entity.

Mr. Cummings: Disregarding the facts as proven.

1395 The Master: Disregarding the fact that the company, by reason of its condition, owned by the Consolidated, can probably, at all times, borrow enough money for working capital; but on the other hand, they would have to, or should pay the parent company interest on those advances.

Mr. Cummings: Of course that is assuming a false premise because the fact is otherwise.

The Master: What is the fact?

Mr. Cummings: The fact is that it is a subsidiary.

The Master: I am assuming that it is a subsidiary of the Consolidated in the sense that the Consolidated owns the stock of this company, and this company is entitled to a fair return on the value of property included in the enterprise, and included in that, the amount should be an amount for working capital.

Mr. Chambers: Exception.

Q. Now, Mr. Miller, did you take into consideration gas furnished to consumers but not billed?

A. Yes.

Q. Why did you do that?

A. Because the company has to deliver gas in advance of the time when the meters are read, and billed, and it costs money to make and distribute that gas, and that amount must be raised somewhere in advance of the time that it is collected.

Q. How long did you assume it would be before those bills were collected which were not even billed?

1396 A. The company delivers gas on an average of somewhere between fifteen and twenty days before the bills are collected.

The Master: My recollection is, Col. Miller, that you had those items in your working capital.

Mr. Ransom: Four.

The Master: Material on hand—

Mr. Ransom: Accounts Receivable, Gas Furnished but not billed, which is a little bit different than accounts receivable.

The Master: Cash, materials and supplies, receivables and gas furnished but not billed?

The Witness: Yes.

The Master: That of course applies generally to gas companies throughout the country, doesn't it?

The Witness: Yes—that is, if the company does not read the meters at the end of the month it applies generally to them; if they read the meters every day of the month—

The Master: What is the general practice?

The Witness: The general practice is to read them every day of the month, but some companies read them at the end of the month.

The Master: But generally speaking they are read at the end of the month?

The Witness: Yes.

The Master: And generally speaking a gas company has to have certain materials on hand?

The Witness: Yes.

1397 The Master: And must have certain cash on hand?

The Witness: Yes.

The Master: And always has certain unpaid bills, that is receivables?

The Witness: Yes.

The Master: And always has some gas out that has not been billed for?

The Witness: Yes.

The Master: That is a condition that has obtained for a great many years throughout the country?

The Witness: Yes.

The Master: Have you ever studied the relation between the amount of working capital, that is, the amount of average material on hand, average receivables, average cash, the average billed gas to the output generally?

The Witness: Yes.

The Master: And as to the cost of working capital? In that relation?

The Witness: Yes.

The Master: Per thousand cubic feet?

The Witness: Yes.

The Master: And how many cents per thousand cubic feet in your judgment, based on your experience, does it usually represent?

The Witness: In 1914 it took about thirty cents.

The Master: As much as that?

The Witness: Yes, in order to have the money on hand with which to discount bills, pay them promptly; in order to take advantage of market conditions and buy supplies under the best conditions.

1398 The Master: What is it now, would you say?

The Witness: I would say fifty cents now.

The Master: You say fifty cents now?

The Witness: Yes—that is the basis of these figures.

The Master: In other words you have taken fifty cents per thousand cubic feet?

The Witness: Yes.

The Master: I thought there was only three hundred and thirty-odd thousand cubic feet?

The Witness: Yes.

The Master: Oh, that is where you make it \$165,000?

The Witness: Yes.

Mr. Chambers: What per cent?

Mr. Cummings: Fifty cents.

The Master: It strikes me as being pretty high, Col. Miller.

The Witness: This company has to have, with all of its advantages—it actually had \$140,000 on the 31st of December, and I think that was low.

Q. I want to ask you right here if you can point out any gas company in the universe where a court had ever approved any allowance as high as fifty cents a thousand cubic feet for working capital?

The Master: Well, that is not important to me; the question is, what is necessary, what is usual, not what some court has approved, because I am not interested in that.

1399 Mr. Chambers: You rule that out? I think he should be allowed to struggle with his brain and point out one; it would be pleasant to hear it.

The Master: No, I won't permit the witness to say what any court has done.

Mr. Chambers: Exception.

The Master: He says it is fifty cents based on the present conditions. Perhaps no case has ever come up yet.

Q. Now, it depends, doesn't it, upon the practices of the company, how much would be allowed for working capital?

A. Not how much should be allowed, but how much it uses. As a matter of fact, under the stress of recent conditions, most companies have run away below what they should have.

Q. I didn't ask you that, I asked you if it did not depend upon the practice of the company; why can't you, Colonel, get down to the real question?

Mr. Ransom: I object to that.

The Witness: Will you read the question, please?

Q. I will repeat it verbatim: Doesn't it depend upon the practice of the company as to how much working capital is necessary?

A. That is not the question you asked me.

Q. Well, answer that.

A. No, it depends not how much they can get along with but on how much is necessary for good management, good operations and good conditions. Many companies are not able to discount their bills—you say that the capital is not necessary; I should say it is necessary in order to discount the bills and save that money.

1400 Q. You say it is absolutely necessary that a company discount its bills?

A. No, I don't say it is absolutely necessary; I say it is necessary for good management; it is a question of the definition of the word "necessary." For good management, I should say it was necessary to take advantage of discounts—it is not necessary for the existence of the company.

The Master: Approximately 340,000,000 cubic feet, that means a total business of about three and a half million dollars, doesn't it?

Mr. Ransom: Of course there is some city gas—

The Master: It is over a three million dollar business.

Mr. Ransom: Yes.

The Witness: I think it is three hundred and thirty-odd thousand dollars.

Mr. Ransom: Yes, not million.

The Master: Well, I never ran a gas company, but it does seem high to me that a concern doing a business of three hundred and thirty to three hundred and forty thousand dollars a year should have one hundred and fifty thousand dollars working capital.

The Witness: Its business ought to be very much more than that for the amount of gas distributed.

Mr. Ransom: Fifty thousand dollars cash in the office and banks, does that seem high?

\$50,000 for materials and supplies, that certainly can't be considered high.

\$35,000 of accounts receivable certainly is not high.

1401 \$20,000 of gas furnished to consumers but not yet billed—it could not be less on that volume of business.

Mr. Cummings: That is more than Judge Hough allowed in the Consolidated back in 1904.

Mr. Ransom: It could not run its business on less than \$50,000 cash in the bank and in the offices; \$50,000 would be very low—how could you discount bills?

The Master: In the Consolidated case they did a business of eighteen million, didn't they?

Mr. Ransom: Well, it required a larger working capital.

The Master: I mean eighteen billion, which would be about \$11,000,000, and I allowed pretty close to \$4,000,000.

Mr. Chambers: Three million eight hundred thousand, I think.

Mr. Ransom: To a big company twenty cents was allowed. The element of cash, in proportion, would be larger in the case of a small company than a large company; the element of materials, perhaps a little larger, because they are all the same kind of materials that you have to have anyway, whether the company is large or small.

The Master: Well, go ahead—What do you claim it ought to be?

Mr. Chambers: Well, Mr. Maltbie has not given me his figure yet but it will be a good deal lower than they claim, of course. All their claims here, you know, are puffed up and blown up; they are trying to make the public believe that they ought to have an

1402 increased rate so that the public will have to pay them a return on a great big working capital.

The Master: Mr. O'Brien seems to have had an awful effect on you.

Mr. Chambers: Well, something has had an effect on me.

In one consideration, I do not think they ought to have any here.

The Master: What?

Mr. Chambers: I think it ought to be taken care of by the Consolidated.

The Master: No, I am against you on that.

Mr. Ransom: You did not allow any working capital to the Consolidated, so that it could loan money to the New York & Queens.

The Master: No, I am against Mr. Chambers on that. I cannot

follow that at all. The question here is, What is a fair working capital for a concern of this kind and this size. You see, in the Consolidated case I practically allowed two-sevenths of the total money business done in the year.

Mr. Chambers: I do not know whether your \$3,800,000 was for the Consolidated Gas Company of Astoria or what.

The Master: No, it was for the Consolidated.

Mr. Chambers: Alone?

The Master: Alone. That is including the necessity of making the gas at Astoria, of course.

Mr. Chambers: You did not say so.

Mr. Neumann: You say two-sevenths of the total?

1403 The Master: Practically. This would bring this to about \$100,000.

Mr. Neumann: About \$90,000—ninety odd.

Mr. Ransom: But there is a difference in the size of the companies.

The Master: Two-sevenths would be approximately \$100,000. I suppose, without knowing very much about it yet, that a small company of this kind probably needs more proportionately than a large company. Is that so, Colonel Miller?

Mr. Neumann: That is objected to as incompetent, irrelevant and immaterial, purely speculation and guess.

The Witness: Yes, they do need more.

By the Master:

Q. In other words, a very large company like the Consolidated company would need on the basis of percentage, of volume of business done, perhaps a little less than a small company like this?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant, immaterial.

A. Yes.

Q. What do you say was the actual amount December 31, 1919

A. \$140,000.

By Mr. Ransom:

Q. Does that include gas not yet billed?

A. Yes.

Mr. Ransom: Just take this, take the ordinary coal and oil steel it amounts to \$38,000—just coal and oil alone.

Mr. Neumann: Paid for by the Consolidated.

1404 The Master: I do not want to be misunderstood as deciding this case in advance of the defendants' proof, but the impression I have is if it is at all doubtful, if there is any wide variance between the defendants' proof and the testimony of Col. Miller, shall probably take the actual working capital of December 31, 1919 of \$140,000.

Mr. Chambers: That would not be right.

Mr. Ransom: I agree that it would not be right. The compa

was not operating under normal conditions, it was up against it financially there.

Mr. Chambers: First they tell you they have to carry a lot of coal, and a little while ago they were claiming they could not get any coal, and did not have any.

By Mr. Chambers:

Q. Materials and supplies, what did you do, take all the materials and supplies they have at the present time and use \$60,000; that is all they got?

A. This is my estimate of an average condition. This is not the actual condition.

Q. That is, you do not know how much of materials and supplies they have?

A. Yes. I do know.

Q. What is it, the actual amount, of all kinds?

A. I could not tell you today.

The Master: On December 31, 1919.

The Witness: On December 31, 1919, it was \$39,375.13

Q. That is pretty near about half what you got, is it not?

A. That is 66 $\frac{2}{3}$ %.

1405 The Master: That is materials on hand?

The Witness: Materials and supplies on hand, yes.

The Master: I thought you said coal and oil on hand was—

Mr. Ransom: But the stock was way down. The ordinary stock of coal and oil alone was \$38,000.

By the Master:

Q. What was the cash on hand December 31, 1919?

A. \$42,137.88.

Q. And receivables?

A. I counted also as cash \$2,200 of Liberty Bonds which were carried there. I carried those as cash. The receivables were \$36,450.07.

Q. And the unbilled gas?

A. The unbilled gas, you understand, is my estimate.

Q. It did not appear from the books?

A. Because that is not on the books. That is \$20,000. That I have to estimate.

Q. What you really have done is you have allowed a little more for cash on hand, about seven or eight thousand dollars?

Mr. Chambers: \$10,000 more for cash.

The Master: About \$7,000.

Mr. Chambers: He said \$2,000 Liberty Bonds.

The Master: And about \$21,000 more for materials.

A. Yes.

Mr. Chambers: No, more than that.

The Master: Yes, it is twenty-one, I think.

The Witness: A little less than twenty-one.

1406 Mr. Chambers: And in cash he said——

The Master: Forty-two to fifty.

Mr. Chambers: \$2,000 of Liberty Bonds comes off of that.

The Master: No, he says he included it.

Mr. Ransom: Liberty Bonds held for employees in lieu of cash.

By Mr. Chambers:

Q. Did you know the balance at the close of the year was, say, about \$13,000 in cash?

A. This is the balance sheet I have before me of December 31, 1919.

Q. And the balance was what you gave?

A. That is the balance.

Q. \$42,000?

A. \$42,137.88.

Q. What was it at the beginning of the year, the next day?

A. I do not know.

Q. The previous year, the beginning of the previous year?

A. I do not know.

Q. About \$13,000, was it not?

A. I do not know.

Q. These materials and supplies, did you ascertain which ones of them might be used in the capital account?

A. No.

Q. You took them all?

A. Yes.

Q. If some of those materials and supplies, like pipes or mains, for example, should go, be laid as mains, then go into the capital account, you would not need that in the working capital, would you?

A. Surely.

1407 Q. You put all the materials, no matter whether they go into that capital account or not, into working capital?

A. Surely.

Q. If they were making extensions of mains, would you include all that material and all the expense of that in working capital?

A. No, in the case of this company most of the main extensions are hauled directly to the ground and do not go through the storehouse. If this company really had accumulated any stock of material and had it in its store account, I should have taken it as materials and supplies.

Q. Do you know in this very year in which you have your figures here they made a very important and material extension to their mains?

A. Yes, I have just stated, though, that that was not in this store house, that material.

Q. How do you know it was not?

A. Because I was so informed by the president of the company.

Q. You took somebody's word for it?

A. I took somebody's word for it.

The Master: The proof is that the work was finished in November.

Mr. Chambers: What?

The Master: The proof is that the work was finished in November.

Mr. Chambers: 1919?

The Master: Yes. The material could not have been in the store house December 31st if it was in the ground.

The Witness: Furthermore, there is not enough there to cover a small part of that material, even.

1408 Q. Has this company any prepayment meters?

A. Yes.

Q. What proportion, did you ascertain?

A. Yes, I did.

Q. What proportion were prepayment meters?

A. I could not say offhand. It is in my appraisal here.

The Master: Will you have any line of examination other than this working capital, Mr. Chambers?

Mr. Chambers: Yes, I wanted to ask him a few more questions on his items of appraisal.

The Witness: There is something less than 3,200 prepayment meters.

The Master: Out of how many?

Q. What is the total?

A. The total is 10,670.

Q. About a third?

A. A little less than a third.

Q. They certainly do not have to carry those prepayment meter customers?

A. Sure they do.

Q. They have to carry them?

A. Absolutely. They go to those once a month, and meanwhile the gas is furnished.

Q. How do you know they only go once a month; somebody told you that?

A. That is the general custom.

Q. I mean this company, did somebody tell you they only went once a month?

A. No, they did not tell me.

Q. You do not know that?

A. Absolutely.

Recess.

1409

Afternoon Session.

ALLEN S. MILLER resumed:

Cross-examination continued.

By Mr. Chambers:

Q. Now, Mr. Miller, speaking of cash that you said the company had on the 31st day of December, 1919, you don't know what that cash was derived from or what it was for, do you, do you know anything about it?

A. I presume it was derived from the business and for the purpose of the business.

Q. No, what was it, do you know?

The Master. Do you know where it came from specifically?

The Witness. No.

Q. Following that up, you don't know whether it was money that was used in the business or not, or what money it was, do you?

A. I don't suppose it was earmarked for any particular purpose.

Q. Well, you don't know?

The Master. You don't know?

A. No; it was the balance in bank.

Q. You don't know but what it was a fund created by some real estate so far as you know—you have no knowledge?

A. All I know is that they had a balance in bank as shown by the balance sheet of the company.

Q. Did you take into account that this company had certain moneys due it known as Accounts Payable?

A. This company's accounts payable are due other companies.

1410 Q. I mean accounts receivable, didn't this company have accounts receivable?

A. They are shown on this list.

The Master. Thirty thousand odd dollars.

The Witness. \$35,000 accounts receivable is shown.

Q. Where did you get this from?

A. As a matter of fact the accounts receivable were \$36,450.07, as shown by the balance sheet.

Q. Where did you get those from?

A. The balance sheet was given me by Mr. Spear.

Q. Aside from that, you don't know whether they had any other accounts receivable or not?

A. The balance sheet does not show any other accounts receivable.

Q. Why did you pick out one particular day?

A. Because that was the end of the year.

Q. Don't you think you ought to look into the average and see how this thing is run to strike a figure for working capital?

A. I did not get the working capital, I did not make up my opinion of the working capital from the books at all. The question was raised here as to what working capital the company had at some particular time. I did not use the actual operating conditions. I know about what working capital this company requires to do this amount of business.

Q. Did you ascertain if they had any fund known as the contingency reserve, and whether this cash in hand didn't have something to do with that?

A. I have the balance sheet here. All of the accounts are shown on it.

1411 Q. How much is under contingency reserve there?

Mr. Ransom: I object to that, it has nothing to do with contingency reserve.

The Master: I will allow it.

A. The balance sheet shows contingency account of \$161,149.66.

Q. You don't know whether this cash that you spoke of represents something that belongs to that fund, do you?

Mr. Ransom: I object to that as utterly immaterial. The question is how much money the company has to have to carry on the business.

Mr. Chambers: That is the question, certainly.

The Master: Objection overruled.

A. I have never known of cash being earmarked by any gas company as belonging to any particular fund.

Q. You just took the amount of cash into consideration?

A. That is what I testified.

The Master: How did you get the figure of \$50,000?

The Witness: In my estimate that is about what I considered a company of this size would need in its ordinary operations.

The Master: For what purpose?

The Witness: The company will flow back and forwards into materials and supplies and into accounts receivable. Sometimes it would be \$50,000, sometimes less, and the other accounts would be up. It is only the total of \$135,000 which is the amount I think should be maintained. The cash would be used in connection with materials and supplies, probably some of it would flow into that, increasing there, some of it might flow into accounts receivable, increasing there. Those three items will change. The capital should be liquid.

The Master: What do they need money for other than for materials and supplies and receivables?

The Witness: Materials and supplies and receivables, and this amount furnished but not billed, that is all.

Mr. Ransom: And payrolls.

The Witness: Well, that will appear—well, on construction they

need money, they need money for construction purposes, they need cash for that.

The Master: What do you figure the payroll of a company like this ought to be on the average per month or week?

The Witness: I haven't made any estimate. I don't know about how it would run.

The Master: Isn't that something that bears on the amount of working capital they ought to have?

The Witness: Yes, but of course the payroll is indirectly reflected in the accounts receivable, and gas furnished to consumers and not billed. Those pretty near represent the expenditures.

The Master: I was wondering whether you needed additional cash. You need the cash to make the gas and distribute it.

The Witness: Yes.

The Master: They put that money in there, and it is represented by receivables, and gas not billed.

1413 The Witness: Yes.

The Master: You don't need cash again for that purpose?

The Witness: No, not for that, if that stood at these particular figures, but these items of materials and supplies, accounts receivable and gas furnished but not billed, vary, it may be up and down, particularly materials and supplies, and if you put your cash in materials and supplies it will appear there and cash will be that much reduced.

Q. You have some of these duplicated, haven't you?

A. No.

Q. Of course you would not say so. Did you show your figures to Mr. Ransom, your testimony, not only on working capital, but other things? Did you go over this with him?

A. You mean this volume?

Q. Yes, all your testimony?

A. Not all of it, no.

Q. Did he know what you were going to swear to in regard to reproduction cost?

A. I went over this Exhibit 66 for Identification.

Q. With him?

A. Yes.

Q. And he expressed his approval of your testimony?

A. Not necessarily.

Q. He didn't not necessarily?

A. No.

Q. Did he make any changes in it?

A. No.

Q. Did he suggest any?

A. No.

1414 Q. How about Mr. Carter, did you go over these figures with Mr. Carter?

A. No; I gave him a copy of this, but I never went over it with him.

Q. And he didn't make any changes?

A. No.

Q. Did Mr. Ransom say to go ahead?

A. No.

A. He said not to go ahead?

A. No.

Q. What did he say, not to give this testimony?

A. He didn't say anything. I gave him my testimony, and that is all there is to it.

Q. He didn't believe in your figures there, did he?

A. He knew that they were right, therefore there was nothing said.

Q. You said he did not necessarily agree with you?

A. I didn't say that, did I?

Q. Did you talk over the theory with him?

A. No.

Q. How much time did you spend with him telling him about your reproduction cost, and that a thing does not wear out?

A. I don't know that I spent any time talking about that.

Q. Did you ever talk your theory over with Mr. Carter?

A. I have.

Q. Did he agree with it?

A. He does.

Q. He wants you to continue to testify like that in these cases?

A. I don't know what he wants. I have talked it over with many of the men in the Consolidated Gas Company organization.

1415 Q. And Mr. Carter approved your theories?

A. That is Mr. Carter's idea as well as mine, and it is the idea of the other men in the company based on their experience in operation.

Q. Did Mr. Carter know your views before you were retained in this case?

A. He did.

Q. On depreciation and reproduction?

A. He did. We discussed it many times over a long period of years.

Q. He knew your views away back in 1915, did he?

A. He did. We discussed it in 1915, and at previous dates. The matter has been broadly discussed by all the gas people.

Q. You are working on the Brooklyn Union case, too, aren't you?

Mr. Ransom: I object to that. That has been asked about a dozen times.

The Master: Well, let us have it thirteen times.

A. Yes.

Q. What is the period of credit on which this company purchased supplies, do you know?

A. No.

Q. What period did you take into consideration?

A. I didn't take any into consideration.

Q. You figured they would pay cash, did you?

The Master: He figures that they get the cash discount.

Q. What cash discount did you figure they would get?

A. It varies with different supplies. Some of them they don't get any, and some they get two per cent.

1416 Q. What did you figure on oil? Do they get more than two per cent on oil?

A. I don't think they get any—I don't know that they get any cash discount on anything. I don't know that the company has enough working capital to discount its bills.

Q. You say that they ought to take advantage of the cash discounts?

A. I say they ought to have enough working capital to permit them to take advantage of the cash discounts.

Q. I am asking you if there is a cash discount on oil?

A. I say as far as I know there is not; I don't know.

Q. All right, there is one where there is not?

A. I didn't say there was not.

Q. Well, is there?

A. I don't know.

Q. How about coal?

A. I don't know.

Q. Is there a cash discount on coal?

A. I don't know.

Q. Generally—I am away from this company, I mean generally?

A. I have never had a cash discount on coal or oil in my experience in the gas business.

Q. Well, those are the principal items, are they not, that are used to make gas?

A. They are important items.

Q. So as to the two big items there is nothing in your proposition that they should take advantage of the cash discounts?

A. There is no cash discount as far as I know on coal and oil.

1417 Q. Then I ask you—you don't answer categorically, so that there is nothing in your proposition that they ought to take advantage of the cash discounts so far as two of the biggest items are concerned in making gas, is there?

A. Not as far as I know.

Q. Do you know whether it is a fact or not that it is the practice of this complainant company to disregard unbilled gas on its books?

A. Looking over this balance sheet I do not see any item that will cover that.

Q. Did you ever see it on any company's balance sheet?

A. Oh, yes.

Q. But you didn't see it on this company's balance sheet?

A. I don't see it; just looking hurriedly over this balance sheet I don't see it.

Q. Does it appear either as revenue or as an asset, speaking now of the unbilled gas?

A. I have just stated that as far as I can see it does not appear at all.

Q. If such gas delivered to consumers but not yet billed is in-

cluded as part of the company's assets then should it not be considered in the revenue accounts of the company?

A. As far as I can see it is not in here.

Q. Well, can't you answer that question?

A. I don't think it is in there at all. It should not be included if it is not in there.

Q. You cannot answer that question? Shall I repeat it?

A. What kind of an answer do you want? It is not here.

Q. What is that?

A. It is not here, as far as I can see.

1418 Q. Well, answer that question?

A. I have answered it.

Q. I will repeat it. If such gas delivered to consumers but not yet billed is included as part of the company's assets, then should it not be considered in the revenue accounts of the company?

A. It should be considered in the assets accounts of the company, not in the revenue, because there is no revenue account for that until the meters are read and it is entered on its books.

Mr. Ransom: That is the very point, that it is not in the revenues account but is in the expense.

The Witness: Surely it is in the expense.

Q. Is this statement correct or incorrect: Unless surplus and revenue are so revised an allowance for unbilled sales would be one sided and unjust to the consumers, for the true profits of the business will not be revealed.

A. Read that again, please.

Q. Unless surplus and revenue are so revised——

The Master: Revised how?

Mr. Ransom: This is another definition, I judge.

Q. That is, if you are going to allow this unbilled gas in your working capital your books ought to be revised so that——

A. So that it will show in the working capital?

Q. Yes, it will show in the revenue.

A. The books should be revised so it would show in the working capital.

1419 Q. That is, you would not show income account if you included it in working capital, your unbilled gas if you had it in your working capital, you would not show a correct income account on the books?

A. Certainly there is a correct income account in the books, that is, a correct asset account.

Q. You would have it in working capital and you would have it in the income account also?

Mr. Ransom: I object to that as absurd on its face.

A. Certainly not, under any circumstances.

Q. Why wouldn't you?

The Master: I think we have had enough of that. The point about it is that your questions would indicate, and they did to a certain extent for a minute, that the company's books did not correctly reflect the amount of its revenue for 1919 in that they did not show the amount of gas which was actually sold, but for which they had not delivered bills.

Mr. Chambers: That might be so, they might sell more gas in 1919—

The Master: That is so, there might be a little more or a little less gas sold in 1919 than in 1918; but taking the years and the overlapping periods they come pretty near averaging, so that the gas that is not billed in 1919 is cared for by the gas that is billed in 1919 that was sold in 1918.

Mr. Chambers: That is why you cannot take one period of a year and determine one of these cases to save your life and get it right.

The Witness: Working capital has to be invested all the time. The company is always two or three weeks behind in its billing, so working capital must be provided.

1420 Q. Did you consider at all, and did you know the practice of this company in regard to the sending out of bills, how often they are sent out, exclusive of prepayment meters?

A. Bills are sent out substantially all days in the month.

Q. By this company?

A. Yes. Meters are read every day.

Q. Between the reading of a meter and the time when the bill is sent out, how much average time elapses?

A. Usually two or three days.

Q. Are the meters read every day in the month constantly?

A. Yes.

The Master: That is, not the same meter?

The Witness: Oh, no, meters are read every day. A meter is read once a month.

Q. Take an individual consumer who has a meter in his house that is not a prepayment meter, how long a time elapses from the time that meter is read until the bill is sent out?

A. Usually two or three days.

Q. How long a time is the meter read for—how long will it be before the meter is read again?

A. A month.

Q. Thirty days?

A. A month, a calendar month. They are usually read, as far as possible, on the same day of each month.

Q. That is the practice of this company, then, to read the individual meters every thirty days?

A. Every month.

The Master: Some months have thirty-one days.

1421 Q. That is, they visit the consumer's premises—

The Master: The same day of the month as far as possible?

The Witness: Yes.

Q. How do you know that, whom did you get that information from?

A. I got that from Mr. Spear.

Q. You took his word for that?

A. I did, and that is the custom of all the gas companies that I know.

Mr. Neumann: I move to strike out the last part of the answer on the ground that it is not responsive.

The Master: Motion denied.

Mr. Neumann: Exception.

Q. Well, then, the result of that would be that you would have a continuous income?

A. Exactly.

Q. Some of the money would be flowing in regularly all through the month?

A. All through the month, about 16 or 18 days behind the outgo.

Q. You would have then 16 or 18 days only that would have to be carried, that is each consumer?

A. Each 16 or 18 days, less the accounts receivable. The gas supplied but not indexed would represent 16 to 18 days in the month. In addition to that you have accounts receivable which may be paid at any time.

Q. That is to say, they are only carrying these consumers 16 days from the time they read the meter until they get the money?

A. No, that is not it.

The Master: That is not what the witness said.

1422 Mr. Ransom: It would appear in accounts receivable as soon as billed.

Q. How much money a company needs for working capital is dependent largely upon its credit, is it not?

A. No, not at all.

Q. Credit hasn't anything to do with it?

A. Of course if he does not pay its bills it would not have the working capital.

Q. The question is, credit has nothing to do with the amount of working capital?

A. That depends. You might substitute credit for cash, and a company might possibly get somebody else to father it, but I don't know of any case where it is done.

The Master: Have you in reaching your figure of working capital allowed anything for credits?

The Witness: Only the ordinary operating credits. Bills are usually payable from 15 to 30 to 40 days.

The Master: You have allowed that, have you?

The Witness: I have assumed that.

Q. You figure that this company did not have any credits, in your working capital?

A. I figured that it would finance itself. I figured that it would have the usual credit with the merchants and coal people and oil people, and people from whom it bought supplies, not that it would lean upon some one to furnish cash for it any day it happened to need it.

The Master: I don't think that is entirely clear. In fixing the amount of working capital did you estimate that bills would be paid immediately upon their rendition?

1423 The Witness: No, I took it under the ordinary working conditions. I don't know how they run, 15, 30 or 40 days.

Q. If this company could be carried for 60 days on its oil and coal, and the principal items that go to make gas, it would not need any working capital, would it?

A. Yes. The coal and oil and materials are capital, and if the company's credit is good enough to get them without paying for them it should still be considered a part of its capital.

Q. What would it want the money for?

A. Well, it would not pay the bills, it would not need the bills.

Q. If they were doing a cash business, and the gas was paid for every night, they would not need any working capital, would they?

A. Certainly they would. They have to make the gas probably on the average 40 days before they get paid for it.

Q. I am saying if they got their pay every night, if all their meters were prepayment meters they would not need any working capital at all, would they?

A. It would cost more to collect the money from those meters than they would get out of it. If they were all prepayment meters and if they collected from the meters every day, you would not get a new dollar for the old one on collections alone.

Q. The men are paid by the week who collect that money, they would not get their money for six days, and the company would get it every day?

A. I know, but the gross receipts would not pay those men.
1424 Q. Did you ever figure that out?

A. No, but I can estimate it. The income per meter is about $2\frac{1}{2}$ cents a day, and it would cost $2\frac{1}{2}$ cents to collect from the meter.

Q. Have you testified in any other case on working capital?

A. Yes.

Q. Where did you give such testimony?

A. I testified in the Newtown case.

Q. How many cents per thousand cubic feet did you allow for working capital there?

A. 30 cents.

Q. Where else did you testify? What year was that?

A. 1914 or 1915.

Q. Where else did you ever testify?

A. I have testified in Paterson and Passaic, I think; I am not sure.

Q. Was that Newtown case a confiscatory case?

A. It came pretty near it; it was a public service commission case.

Q. Well, it was a rate case, was it not?

A. Yes.

Q. Before the Public Service Commission, wasn't it?

A. Yes.

Q. It was not in a court of justice, was it?

A. No, it certainly was not.

Q. How about the Kings County case, did you testify there?

A. I think I did.

Q. How much did you testify per thousand cubic feet?

A. I don't recollect; I am not absolutely sure that I did testify to that.

1425 Q. Any other cases now except the Kings County Lighting and the Newtown case?

A. Yes, in Washington.

Q. Washington, D. C.?

A. Yes.

Q. How much did you allow there for working capital per thousand cubic feet?

A. 30 cents.

The Master: When was that?

The Witness: That was in 1913, I think, or 1914.

The Master: Let me ask you. You of course have increased the working capital per thousand cubic feet because, I take it, you have figured on the present prices realized from gas?

The Witness: No, on account of the increase in the cost of gas.

The Master: But if the amount realized, the amount charged for the gas proportionately increases the working capital would not necessarily have to be higher, would it?

The Witness: No, not to cover the increase in price, but to cover the increase in the cost of gas.

The Master: What I am getting at is this: In 1915, to illustrate, in that Newtown case you figured 30 cents per thousand cubic feet?

The Witness: Yes.

The Master: You figured 30 cents at that time having in mind the cost of materials?

The Witness: Yes.

The Master: And the amount of revenue got from the gas itself, isn't that so?

The Witness: Yes, having in mind the cost of materials and labor only.

1426 The Master: Does not the amount realized from the sale of gas enter into it?

The Witness: Yes, as accounts receivable it does.

Mr. Ransom: It would increase the amount of working capital on which the company is entitled to a return.

The Master: In other words, the more they charge for the gas the more working capital they would have to have?

The Witness: Yes, the accounts receivable increase—

Mr. Chambers: You had better not increase the rate here.

Mr. Cummings: You will have to increase them continually.

Mr. Ransom: It increases the amount of mobile or floating assets on which the company is entitled to a return. That is all covered in the uniform system of accounts. There is a certain fixed capital on which the company is entitled to a return, and there are certain floating assets. If you increase the gas rate it increases the amount of accounts receivable.

The Master: There is something wrong about that.

Mr. Neumann: I think the gentlemen who expound it are wrong. There is nothing wrong about what you are driving at, but what the gentlemen try to expound is wrong.

The Master: If you are taking the receivables for the purpose of figuring working capital—and my recollection is that Mr. Maltbie did—then that is so, that the more you get for your gas the
1427 more your receivables are and the more your working capital is; but there is something wrong about it.

Mr. Ransom: The question is how much has the company got in the business. Whatever amount it has got in the business it is entitled to a return on, under your Honor's theory. What it has in the business is in two forms. One is the fixed capital, as the Public Service Commission calls it, namely, the fixed tangible capital. The other is that the Public Service Commission calls the current floating or mobile assets, to use the Commission's term. It is in various forms. The company has got to have money enough, whether it is in the form of materials and supplies, whether it is in the form of moneys in the banks, or whether it is in the form of accounts receivable, or whether it is in the form of gas on which money has been laid out but which has not yet been billed. Whatever form the amount is in that the investors have in mobile or floating assets they are entitled to a return on it. Of course you increase the rate for gas there is more in the form of mobile and floating assets.

The Master: Yes, I can see that it works that way, that it may work that way, but somehow or another it does not hit me right.

The Witness: The profits of almost any enterprise are part of the enterprise as soon as the selling takes place.

The Master: I understood the working capital to be the amount of money you need for stock on hand, for your manufacturing expense, while you are waiting to get your money back
1428 merchandise that you are selling; that is what I understood to be the working capital.

Now, I have taken the testimony in the Consolidated case and this case as a method of calculating the working capital—I do not know how it could be done otherwise.

I can see where, when you have a lot of material on hand, that is capital that is laying there, it is dormant, it is invested. I can see where the cash you need to meet your payrolls with

day to day has got to be considered—you need that. Now, I assume that the receivables must likewise be considered——

The Witness: Of course, you have laid out, as against your receivables, all of your operating costs so that in any case the only kind that could be questioned——

The Master: Would be the profit?

The Witness: Would be the profit.

Mr. Ransom: And that would be distributable, that is, it is money which, if it had been paid in, the company would be entitled to deal with?

The Witness: If there was a profit on it?

Mr. Ransom: If the company was making a profit, it would become distributable; consequently, as long as it is all in the hands of consumers or persons who owe it, it becomes a part of working capital.

The Uniform System of Accounts provides that a part of the working capital is the Accounts Receivable.

The Master: Well, go ahead. As I have already stated, I don't get it clearly in my mind, but I will hear what Mr. Maltbie says when he gets on.

1429 By Mr. Chambers:

Q. Is this correct, the necessary working capital needed is to take care of operating expenses in advance of the collection of the company's bills to the consumer and not the total cost of gas delivered for which payment has not been received?

A. Working capital is way more than that, way in excess of that.

Q. Well, in what particular?

A. It must take care of material and supplies; it must take care of the gas——

Q. Isn't that an operating expense?

A. No; materials and supplies in stock are not operating expenses, no, certainly not. They must take care of the gas that has been billed and not collected for, furnished and not billed.

The Master: I know in the Consolidated case, Mr. Chambers, you made no point about receivables not being a proper element of working capital.

Mr. Chambers: I made some contention about it.

The Master: You rejected and contested certain receivables, certain moneys due from the City of New York. Now, I ignored that in my consideration of it; I didn't think that they were the kind of receivables that were intended.

Mr. Chambers: You didn't take into consideration the four hundred and some odd thousand, did you?

The Master: That was on deposit?

Mr. Chambers: Yes.

1430 The Master: I resolved that by taking Little's estimate of about twenty cents—he said $22\frac{1}{2}$ cents really, and I didn't quite accurately quote him when I said twenty. There was

enough in the record for me to make it twenty; back in my mind there was \$400,000 floating around that I did not want to discuss in detail, but I had it in mind.

Mr. Ransom: And as usual, you resolved all doubt against the Company.

Q. Where else did you testify, except in these places you have stated, on working capital?

A. I think I testified in the Haverhill case; I think I testified on working capital in that case.

Q. What was the cents per thousand cubic feet?

A. Thirty cents.

Q. There you always uniformly held it thirty cents?

A. My experience in 1914 and previous to that was that thirty cents was about what was required.

Q. 1919, you are going to hold uniformly to fifty cents?

A. At present prices, about fifty cents. If prices change, of course it will change the amount of working capital required by the company per thousand feet of gas.

Q. You have given all the cases, now, on which you have testified on working capital?

A. I don't know that I have—I don't believe that I testified in all the cases that I have given.

Q. Where have you had any experience with any company in the last few years as to what working capital is necessary in a gas-manufacturing company?

A. I am president of the Hyattsville Gas & Electric Company and am hard put to it to get the working capital required by that company.

1431 I have been in touch with the reports of other companies, examining operating conditions of these companies in New York and in Brooklyn.

Q. I didn't ask you that. Where is Hyattsville, what is that, a little, small, company?

A. It is a small company.

Q. Those are all the experiences you have had—in this small company?

A. Only one experience?

Q. In that one company, I mean.

A. I testified here that I was vice-president and manager of the Consolidated Gas, Electric Light & Power Company of Baltimore a long time; I operated the East River Gas Company for a long time.

Q. In the last five years, what companies have you been connected with except that one small one?

A. That is the only company I have been actively connected with as an officer. I have been in touch with a great many gas companies.

Q. Can you give me the items in your reproduction cost in which you used the costs as given you by the company for your reproduction cost?

The Master: Read that question.

Q. (Read by the stenographer.)

The Master: Do you understand that question, Col. Miller?

The Witness: I think so.

The Master: What do you understand that question to mean?

The Witness: I stated that I secured, from the company's books, cost of automobiles and used that cost in my appraisal. He wants to know whether I used any other figures from the company's books in my appraisal—that is my understanding.

Q. I want to know if you used that for street mains?

The Witness: Whether this—

The Master: Whether it was the Company's cost in arriving at his cost of reproduction?

Mr. Chambers: No, he said for typewriters and automobiles he used the company's cost.

The Witness: I did not say that, for typewriters.

Q. You did for automobiles?

A. I said I used the cost to the company for automobiles, yes.

Q. And you did not for typewriters?

A. No.

The Master: Now, what you want to know is whether, in his reproduction cost, he has used any other cost figures?

Mr. Chambers: No, I will ask him.

Q. Buildings and apparatus, did you use the company cost as reflected, as you said, for your figures?

A. No—

Q. Well, you said no, that is sufficient.

A. Wait a minute, let me see how broad that "building and apparatus" account is, and see whether there is anything in there. There is a bare possibility that there are one or two gauges or other small items bought in 1919, where I may have used the cost, but in a very large proportion the whole, if not the whole, I did not get the cost from the company's records of the item "buildings and apparatus."

1433 Q. Street mains?

A. Street mains did not come from the cost of those items as paid for by the company.

Q. Services?

A. Wait a minute, let me finish. I did check up the actual cost of laying certain items of mains in 1919—

Q. I didn't ask you that.

A. (Continuing:) —to see whether my estimate agreed approximately with the actual amount being paid by the company.

Q. All right, just for buildings and apparatus, your figure is substantially fifty per cent. more than you paid, isn't it, than you found they paid?

A. I don't know.

Q. You didn't figure out the percentage?

A. (No answer.)

Q. Now, services is that your own figure or did you, for convenience, adopt the cost to the company?

A. Let me check this.

Q. As given to you?

A. Let me check that other question. Answering the previous question, the estimate for 1920, January 1st, is about fifty per cent. more than the summary of cost—than shown on the summary of cost.

Q. That is for buildings and apparatus, is it, or street mains?

A. I was speaking of everything.

Q. Well, now, as to services, your figure is 62.2% more than it cost the company?

The Master: According to their summary.

Mr. Chambers: According to their summary.

1434 The Master: Where does that lead us anywhere? You can show that by a comparison of figures, can't you?

The Witness: I could figure that out for you if you like.

Q. I am just asking you, services, you used your own figure?

A. Yes, checked by the actual payments made by the company in 1919.

Q. How about meters?

A. Meters, I used the actual payments being made for meters at the present time—as of January 1st.

Mr. Neumann: 1920?

The Witness: 1920.

Q. Just as if the meters were brought on reproduction cost as of now?

A. The whole thing is reproduction cost as of January, 1920, the whole estimate.

Q. Well, automobiles are not?

A. Well, for purposes of convenience, it may be a little before that, but substantially the whole estimate is as of January 1, 1920.

Q. How about gas appliances?

A. That was based as of January 1, 1920.

Q. Is that your own or did you substitute the cost there—

A. That is the price which was being paid, the market price of those appliances as of January 1, 1920.

Q. How about arc lamps?

A. That was the price of arc lamps as of January 1, 1920.

Q. That is your own estimate, isn't it?

A. My own estimate.

1435 Q. For arc lamps it is your own estimate?

A. Yes.

Q. Tools and implements, is that your own estimate?

A. That is the price of those items as of January 1st.

Q. Is that your own estimate,—I didn't say anything about price?

A. That is the price of those items, that is what they were worth.

Q. Did you use the cost to the company?

A. No, I didn't use the cost to the company, I used the market price of those items as of January 1st.

Mr. Chambers: I move to strike out the last part of it.

The Master: Motion denied.

Mr. Chambers: Exception.

Q. Did Mr. Carter give you any of these prices for street services and mains, appliances, meters and arc lamps?

A. No.

Q. Did Mr. Spear?

A. I don't think that he gave me any prices except the amount that he paid for the mains and services in the latter part of 1919.

Q. Who gave you the price of Underwood Typewriters?

A. I got that from the Underwood company.

Q. That is the price at which those machines were selling, \$112.50, in 1919?

A. January 1, 1920.

Q. Did any other officer of the company give you any prices, connected with the New York & Queens Company?

A. Not as far as I can recollect.

1436 Q. Why can't you recollect?

Mr. Ransom: Objected to, he hasn't said he did not recollect.

The Master: Well, do you recollect any others?

The Witness: No, I don't recollect any others.

Q. Did you ask the Underwood Typewriter Company what their price was on second-hand typewriters?

A. No.

Mr. Ransom: Objected to as immaterial.

Q. Do you know that it was about \$30, or \$40?

Mr. Ransom: Objected to.

Q. On any kind of machine that was used some, did you inquire?

The Witness: Do you overrule the objection?

The Master: Yes.

The Witness: I made no inquiry regarding any second-hand typewriters.

The Master: You were talking about a new typewriter?

The Witness: Yes.

The Master: Reconstruction, new?

The Witness: Yes.

The Master: Of all these items?

The Witness: Yes.

The Master: This whole plant?

The Witness: Yes.

The Master: You were not interesting yourself in junk value or second-hand value.

The Witness: No.

M. Neumann: Or in depreciated value?

The Witness: No.

1437 Q. Did you make any inquiry as to the price of a second-hand 1913 Model Ford Runabout?

The Master: I won't allow the question, it has been sufficiently covered.

Mr. Chambers: Exception.

Q. Did you find some of the complainant's mains that were in the open, uncovered—are there some?

A. There are two or three bridges——

Q. Well, are the mains out in the open?

A. Well, the pipes are in the open, yes.

Q. They are exposed?

A. Yes.

Q. They are iron pipe?

A. Yes.

Q. Exposed to the salt water, any of them?

A. No.

Q. None of them?

A. No.

Q. Exposed to any water?

A. No.

Q. Exposed to the rain, aren't they?

A. Well, these particular ones that are on the bridges, I am not sure whether they are exposed to the rain or covered, I don't recollect—they may be exposed to the rain.

Q. You didn't see that line of pipe that runs through the marsh, did you?

A. I didn't see the pipe.

Q. Where is the pipe?

A. You refer to the only pipe——

Q. The line that runs out to College Point through the marsh?

A. No, I didn't see that line.

Q. Those pipes are not exposed?

A. They are in the ground.

1438 Q. They are in the ground.

A. Surely they are in the ground.

Q. Any pipes that are exposed to the atmosphere, rain and so on, I don't suppose those rust or wear out?

A. Not when properly painted in the case of wrought iron; in the case of cast iron, no, whether painted or not.

Q. Those will last indefinitely?

A. Those will last indefinitely.

Q. So that a pipe that is exposed will last just as long, in your opinion, as one that is buried?

A. If kept properly painted, yes.

Mr. Chambers: That is all.

Cross-examination.

By Mr. Neumann:

Q. You stated that you have testified in the Kings County case, Mr. Miller?

A. Yes.

Q. That was before the Supreme Court of the State of New York?

A. Yes.

Q. Do you recall testifying on January 24, 1919?

A. I don't recall the specific date, no.

Q. I want to direct your attention to some questions and answers.

The Master: With what are they in conflict with what the witness said here?

Mr. Neumann: Something that he said here this morning.

The Master: What did he say here this morning?

Mr. Neumann: On the question of depreciation.

1439 Q. Do you recall this question being asked of you:

"Q. Therefore, when a machine is started up and assuming, as we must, as you intimated a few moments ago there must come a time, when, for any reason, wear and tear, inadequacy, obsolescence, catastrophes, whatever they may be, that machine will come to a point where it cannot be used any longer, should we not undertake to forecast, with such accuracy as we can, by the experience of those whose experience we are able to get, some period which will represent the life of the work of that machine, so that those who have investigated will be able to require, from the consumers or others who benefit from its use, a contribution to carry the cost of the replacement cost of that machine by other machinery?"

Do you recall that question?

A. No, not definitely. A great many questions were asked me on that general subject.

Q. And your answer to that was,

"Taking the plant as a whole, I should say yes."

Do you recall that?

A. No, I do not.

Q. If the record so states you would say that is correct, would you?

A. I am not sure of that, I would like to see all the context.

Q. Would you want to look over this record?

A. Yes.

The Master: Let the record show that on the request of the witness the record in the Kings County case is handed to him
1440 for his inspection.

Mr. Neumann: The stenographer's minutes.

The Master: The stenographer's minutes.

The Witness: That is correct. I stated something should be provided for retirements.

Q. No, I did not ask you that, Mr. Miller. I asked you whether you recalled that question and that answer?

A. Yes.

The Master: He says yes, that is correct.

Mr. Neumann: I am going to follow them right along.

The Master: Go ahead.

Q. This question was asked you——

Mr. Ransom: The next question; you are going to read continuously, are you?

Mr. Neumann: Yes, continuously. What did you think I was going to do, read them intermittently?

The Master: Proceed.

Q. The next question is.

“Q. I observe that you have intimated, and I am not sure but what you have definitely stated, that you object to the word ‘depreciation’ in connection with what I have just spoken of, because usually where depreciation seems to imply that a less value in the course of its life by the amount of what is conceded to be its depreciation. Is that true, so far?”

and your answer is:

“That is correct.”

Do you recall that question and that answer?

A. Yes.

1441 Q. And you made that answer to that question?

A. Yes.

Q. Then the next question:

“Q. And you suggest that there should be some provision made in view of the possible necessary retirement of the property, for what you suggest should be replacement of that property at the end of the term?”

and your answer was “Yes.”?

A. Yes.

Q. Is that true?

A. Yes.

Q. And the next question:

“Q. Now, personally I am not interested in the name by which this thing is called, whether you call it depreciation or call it replacement cost, but I do want to get clear the fact. I think your testimony has indicated that in your judgment there ought to be, in any well regulated and common sense scheme for the creation and operation of this gas company or any other gas company, some anticipation of the fact that machinery or property which the company devotes

public use will come to an end for some reason at some time, and that the company, and therefore the consumers, should make a proper provision for that time, so that whatever property may be necessary to take the place of that which is in use shall be provided. That I understand is your idea?"

and your answer is:

"That is correct."

Do you recall that question and that answer?

A. Yes.

1442 Q. And that is correct, is it?

A. Yes, so far as it goes.

Q. Now, the next question:

"Q. And it is your idea, as I remember it, that this should properly be spread over a certain period of time, that this provision which might be made should be carried along from time to time and should not be allowed to wait until this indefinite point comes at which the property is necessarily thrown out?"

and your answer is:

"That is correct."

Do you recall that question and that answer?

A. Yes.

Q. And you made that answer to that question?

A. Yes.

The Master: Is that all?

Mr. Chambers: I have just a question or two. I do not want to prolong this.

By Mr. Chambers:

Q. Do you know the kind of generator sets, these three generator sets, that are used by this company?

A. Yes.

Q. The make?

A. Yes.

Q. What make are they?

A. United Gas Improvement Company.

Q. Do those or do they not have an expectancy of life?

A. I never knew of one being discarded, of that type, except for inadequacy.

Q. You concede that they wear, those sets wear out, the parts wear?

A. Yes.

1443 Q. And that those parts will have to be replaced?

A. From time to time, yes.

Q. So that finally you might replace pretty near the entire machine, say?

A. Yes.

Q. If the gas consumers are paying a return sufficient to keep the

parts of that machine replaced right along, they are really paying for a new machine, are they not?

A. No, certainly not.

Q. You say not?

A. Absolutely not.

Q. What are they paying for?

A. They are paying to maintain that machine.

Q. It finally becomes a new machine?

A. No.

Q. After a certain number of parts——

A. No, it is the old machine. It may not have anything left of the original machine, but it is still the old machine.

The Master: That is enough of that. Is there any distinct, new line?

Mr. Chambers: Here is another question.

Q. Do you know what percentage or about what percentage of the fixed capital assets of this company were acquired during the so-called war period, 1915 to 1919?

A. No.

Mr. Chambers: To be fair, that is about all.

The Master: Judge Ransom has some questions.

Mr. Chambers: Then I have a motion to make.

1444 Redirect examination.

By Mr. Ransom:

Q. Colonel Miller, are you able to say from your experience what is the reasonable and necessary investment per thousand cubic feet of gas sold of a plant and distributing system of about this size, in a similar territory, assuming such investment made prior to 1916?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial.

Mr. Chambers: I object to that as immaterial, irrelevant and incompetent.

The Master: Will you make that 1915?

Mr. Ransom: Well, part of 1915.

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, not proper proof, based on speculation, a guess, and from a witness not properly qualified to testify to that fact.

The Master: Overruled.

Mr. Chambers: And on the additional ground that that is not the way to ascertain working capital.

The Master: No, it is general value of the entire property. It is another method of figuring the value of the whole property, and——

Mr. Chambers: Or the way to ascertain the value of the investment—not the proper way to ascertain *in* the value, fair value, upon which a return should be allowed.

The Master: Overruled.

Mr. Chambers: For rate making purposes, or this kind of a purpose.

The Master: The question is, can you state?

A. Yes.

1445 Q. Will you state?

Mr. Neumann: Same objection.

Mr. Chambers: Same objections.

The Master: Same ruling.

Mr. Chambers: Exception.

A. Between \$5.50 and \$6.00 per — cubic feet.

Q. Sold?

A. Of sales.

Q. Colonel Miller, you have been interrogated regarding the time when various units of the property inventoried and appraised by you were installed, and as to the cost of it when installed. Did you examine the books and the records of the company to ascertain what the various items of property had cost the company?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial, and the witness not competent to testify, and the answer would be worthless.

The Master: Overruled.

Mr. Chambers: Exception. He says he does not know anything about it except by hearsay.

A. Yes.

Q. In many instances did you also examine the vouchers and the contracts and other supporting records?

Mr. Chambers: Same objection.

The Master: Overruled.

Mr. Chambers: Exception.

A. Yes.

Q. For example, on mains and services did you examine all of the vouchers and the inspectors' reports?

Mr. Chambers: Same objection.

1446 Mr. Neumann: Why not let the witness state what he did, without asking him these questions in that form. They are very dangerous, to say the least.

The Master: Overruled.

Mr. Neumann: Exception.

Mr. Chambers: They are not proper redirect, either.

A. All covering the mains and services laid since August 1st—I mean mains laid since 1901.

Q. On the larger items of property did you find and examine contracts as well as vouchers?

A. Yes.

Q. And in many instances did you go to the vouchers for additional details and information supplementing what you found in the books?

A. Yes.

Mr. Chambers: Just a minute. I object on the ground, among other things, it appears he would not have time to do that.

Mr. Cummings: A physical impossibility.

Q. Did you at my request make up from these books and records a detailed statement of the cost to the New York & Queens Gas Company of the plant and distributing system and other properties which you inventoried as of January 1st, 1920?

Mr. Chambers: I object to that as incompetent, irrelevant, immaterial and improper. The witness is not competent to testify to it.

The Master: Overruled.

Mr. Neumann: In addition to that, if the Master please, the present state of the record is such that he was going on in at least nine cases at one time, it would have been a physical impossibility for any man to have done what Mr. Miller here testifies he did.

Mr. Chambers: And on the further ground it is hearsay.

The Master: That does not affect the relevancy or materiality of the testimony.

Mr. Chambers: It is hearsay and secondary evidence.

The Master: Overruled.

Mr. Chambers: Exception.

Mr. Neumann: It is surprising that a court will listen to any such preposterous testimony.

The Master: Answer the question.

A. Yes.

Q. And is this such statement, referring to Complainant's Exhibit 96 for Identification?

A. Yes.

Q. On pages 3 to 48, both inclusive, did you set forth the cost of each item of property shown by the books and records to have been added since August 1st, 1904, which you found to be in use as of January 1st, 1920?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial.

The Master: Overruled.

Mr. Chambers: See what he is leading to. He is about, I assume, to offer that in evidence, opening up a new chapter in this case, delaying the case. If he was going to put it in he might have put it in before and examine this witness about it, and it is entirely improper; anyway, the witness is not competent to testify to that or anything else. Exception.

1448 Mr. Neumann: May I add that this is not an ordinary law suit, that we are not dealing with ourselves at arms length. This is at least the third time to my recollection that complainant's

counsel has brought a witness up to a certain point, got him to identify an exhibit, dropped him, sought to compel us to put the exhibit in, objected to the cross-examination of the witness on this particular exhibit, and after we get through then introduces the exhibit. I think that is a little bit beyond orderly procedure.

Mr. Chambers: I want to say one thing more, and it is just as good a time to say it here and now as any other. This witness has certainly not been shown competent to do any accounting. He is not an accountant, and I won't say what else he is not; there are a lot of things I might say, I might be in contempt if I said it all. But it seems to me it is entirely improper to trot out here this worthless piece of paper, that should be made by an accountant and not by a so-called engineer, and it is pretty late, I think, to bring this up.

The Master: Overruled.

Mr. Chambers: Exception.

A. Yes.

Q. And did you show the date of its acquisition or installation according to the books and records, the ledger references showing the sources from which you derived the respective items?

Mr. Neumann: Same objections as last urged.

The Master: Overruled.

Mr. Neumann: Exception.

1449 A. Yes.

Q. As to property which you found was in use on January 1st, 1920, but which was not added from August 1st, 1904, to January 1st, 1920, what did you do?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, and upon all the other grounds last urged, and upon the additional ground that the question is not quite clear.

The Master: Overruled.

Mr. Chambers: I will take the exception.

A. I made an estimate of the value of that property as of August 1st, 1904.

Q. And the details of that are shown on page 2 of this statement?

A. Yes.

Q. And the figures shown on these pages 3 to 48 are correctly taken by you from the books?

A. Yes.

Mr. Neumann: Objected to on the grounds as incompetent, irrelevant and immaterial.

The Master: Overruled.

Mr. Neumann: Exception.

Q. And the items and figures shown on page 2 are correct, according to your best knowledge and judgment?

A. Yes.

Mr. Neumann: Same objection.

945

The Master: What do you mean by correct?

Mr. Ransom: They are correct according to his knowledge and judgment.

Mr. Neumann: What does that mean?

The Master: Correct for the books, or correct and reasonable values and costs?

1450 Mr. Ransom: They are the reasonable cost to the company.

Mr. Chambers: It is an estimate on an estimate.

Mr. Neumann: I object to it.

By the Master:

Q. How about these other items, where you find cost in the books; did you examine those cost items at all to determine in your opinion whether they were reasonable costs at that time?

A. Yes.

Q. What have you to say about that?

A. I think they were very reasonable.

Mr. Chambers: I object to the question on all the grounds heretofore stated in full, and which I have got strength enough to repeat again if necessary.

The Master: Overruled.

Mr. Neumann: I move to strike the answer out as not responsive, as vague, indefinite and meaningless.

The Master: Motion denied.

Mr. Neumann: Exception.

By Mr. Ransom:

Q. And the note set forth on the opening page of this Exhibit 96 for Identification is an explanatory note showing the manner in which the statement was prepared?

A. Yes.

Mr. Tobin: I do not know whether you are aware of it, if your Honor please, but the costs attempted to be established here are not the actual costs to the company.

The Master: No, I understand some of it is estimated.

1451 Mr. Tobin: I mean going back to the time of the acquirement.

The Master: I know it.

Mr. Ransom: I offer Complainant's Exhibit 96 for Identification in evidence.

Mr. Chambers: I object to it on the ground it is incompetent, irrelevant and immaterial, hearsay, secondary evidence, hearsay on hearsay; no foundation laid for it. The witness is incompetent to testify to it; it ought to be made a penal offense to waste paper on such an exhibit.

The Master: Anything else?

Mr. Chambers: That is enough.

The Master: Is this the paper that was served in accordance with the order of Judge Mayer?

Mr. Ransom: It is.

The Master: How long ago?

Mr. Ransom: Why, I cannot exactly state the date from memory. I should say it was upwards of a month.

The Master: I will overrule the objection. Mark it as an exhibit.

Mr. Tobin: Exception.

Mr. Neumann: Objection.

Marked Complainant's Exhibit No. 96 in evidence.

The Master: Cross examine.

Mr. Chambers: First I move to strike out the entire testimony of Mr. Miller upon the ground that he has projected into the case an unheard of and unsound principle and theory, such that no court in this land has ever even considered, to say nothing about 1452 adopting; and on the further ground that it is incompetent, irrelevant and immaterial and not helpful to the Court in reaching a decision in this case.

The Master: Motion denied.

Mr. Chambers: The same is contrary to all rules laid down by all courts in rate cases and confiscatory cases.

The Master: Motion denied.

Mr. Chambers: Exception.

The Master: Cross examine on this Exhibit 96.

Mr. Chambers: Then I move to strike out his testimony, especially as to going value, on the ground that he has not considered the actual experience of this company, the original investment, the earnings from the stock, time actually required, and expenses incurred in building up the business.

The Master: Motion denied.

Mr. Chambers: And all the grounds mentioned in the case of *People ex rel. Kings County Lighting Company vs. Wilcox*, in 210 New York, page 479, at page 495; also the *Knoxville Water Company* case, 212 U. S., page 1; also the case of *Des Moines Gas Company vs. The City of Des Moines*, 199 Federal Reporter, 204, and also 238 U. S., page 168.

The Master: The motion is denied.

Mr. Chambers: Exception. Now shall I cross examine on this new exhibit?

The Master: Yes.

Recross-examination.

By Mr. Chambers:

Q. You did not know the age of the property that was installed by the predecessor company in 1904, did you?

153 A. No.

Q. Have you given any cost prior to 1904?

A. No, I have given an estimate of value as of 1904.

Q. In other words, you start off in the first place with a pure estimate?

A. With an estimate, yes.

Q. And you did not know what property they had of your own knowledge?

A. Yes, I estimated—

Q. Of your own knowledge now?

A. I estimated on all of the property that I could not find from the books, which was established—I mean which had been put in since 1904, but which was there.

Q. How did you know what was put in prior to 1904?

A. Oh, there is a great deal more property—must have been, because a very large part of this plant has been rebuilt since 1904, and I only took what remains in the plant, and which according to the records was not put in since 1904.

Q. How do you know that was put in? In 1919 how did you know that any single piece of plant or property was there prior to 1904, of your own knowledge?

The Master: As I understand it, Mr. Chambers, Mr. Miller says that he undertook to establish the cost of all of the property that he found there from the books; that he found certain property that the books did not indicate had been put in since 1904. He therefore could not establish cost according to the books, and he thereupon assumed that it must have been there in 1904 and put in there 1454 at some time prior to 1904, and he therefore estimated the cost. Is that the idea, Colonel Miller?

The Witness: That is correct, sir.

Q. Was there a holder there prior to 1904 that you have included here?

A. Yes, two holders.

Q. You do not know how old that holder was?

A. No.

Q. What unit prices did you put on that holder in your 1904 estimate?

A. That holder was \$23,700, and foundation \$3,000 total \$26,700.

By the Master:

Q. What page is that, Colonel Miller, on your paper?

A. I am giving now the details of what appears in Apparatus, on page 2.

Q. It is on some subsequent page, is it not?

A. No, it is not in that paper you have. That is a 250,000 foot holder that I am giving you the figures for. The 100,000 foot holder was \$14,500, and \$1,500 for the foundation, making a total of \$16,000.

By Mr. Chambers:

Q. What were your units?

A. I do not remember.

The Master: The details are not in here?

The Witness: That is the price that my company was charging for that sized holder as of that date.

Q. So you just put the price or estimated the price of a new holder as of that date?

A. Yes.

Q. You started off with a new holder?

A. Yes.

1455 Q. Although it probably might have been a good many years old?

A. Yes; I took a new holder as of August 1, 1904.

Q. It might have been as old as 1856?

A. Oh, no.

Q. Not quite as old as that?

A. Not by many decades.

By the Master

Q. How do you know?

A. Because they did not build the steel tank holders as of that date.

By Mr. Chambers:

Q. You do not know how old it was?

A. No, but it was not and it could not have been more than five or ten years old—it could not have been more than ten or fifteen years old, because the steel tank holders were not built then.

Q. And you go to work in 1904 and put the price of a brand new holder down for that?

A. I put the price of a brand new holder down, yes.

Q. In 1904 you put a price for a new holder?

A. I put a price of a new holder, and in 1920

Q. Did you do that with all of them?

A. With all the apparatus, all the buildings and apparatus, mains and services.

Q. For your \$280,000 that is what you did?

A. That is the price reproduction new as of that date on a sub-contract basis.

Q. Where did you get your land value from?

A. Looking over the sales of land in that neighborhood at subsequent dates, and in view of the testimony of Mr. Halleran, I estimated that land on a basis of 30 cents per square foot.

1456 Q. I am speaking of your value of \$19,423 in 1904.

A. That was the estimate of the land that was owned in 1904.

Q. Halleran did not testify to that.

A. At 30 cents a square foot.

Q. Halleran did not testify to any value of land in 1904.

A. He testified to values of previous dates for a period of ten years, and I took 30 cents as the value in 1904.

Q. You just made a wild guess?

A. That is not a wild guess.

Q. I call it so. How much land did you figure they had; where did you get that from?

A. I took the land that is now owned and deducted from it the purchases since 1904.

Q. Have you ever bought and sold any real property, or did you around 1904, in that locality?

A. I never bought or sold any in that locality in 1904.

Q. You do not know anything about the value of real property there, do you?

A. No, I based it on the records of this company and on the—

Q. What records? You said there were none.

A. No, I have not.

Q. What records did you base it on?

A. The company bought one lot 50 feet by 75 from one Rogers in May, 1909; he bought another piece 50 by 75 from Rogers in 1911; it bought another piece 25 by 100 from Rogers in 1911; it bought another piece 25 by 100 from Kirby in 1911; it bought a piece in 1915 from Coretti, 50 by 125, and it bought a piece from Mc-

Millan, 100 by 150 with a little extra piece on it in 1915. 1457 It bought a piece 50 by 100 from one Powers in 1912; it bought an odd shaped lot, having about 75,000 square feet from Halleran in 1912, and I had all those figures before me.

Q. So you decided you would be expert enough to put a price on this?

A. I estimated in view of the prices that it paid for those, and in view of the statement that Mr. Halleran made here, that thirty cents was about a fair price for that property in 1904.

Q. And the prices that you spoke of were 1909 and 1911, and so on?

A. The dates given.

Q. Then you went back and fixed a price of this land for 1904?

A. 1904.

Mr. Neumann: I move to strike out the witness' exhibit, so far as it relates to land, page 2, \$19,423, from the record.

Mr. Ransom: He has a right to take Mr. Halleran's statement on this record for prices back to that time.

The Master: Motion denied.

Mr. Neumann: Exception.

Q. What were the prices of these pieces of property that you had given to you? Who gave them to you, first I will ask you?

A. I got them from the books of the company.

Mr. Ransom: The details are shown in the exhibit.

The Witness: The details are shown in the exhibit; I will turn to them.

By Mr. Neumann:

Q. You mean page 4 of your exhibit?

A. Page 3. On page 3 they are summarized. Page 4 gives the details. The plot bought from Rogers, 50 by 75, cost \$1,200.

1458 Q. Is that plot A on Schedule 3?

A. Yes.

Q. What are the dimensions?

A. That dimension is 50 by 75. Plot B is 50 by 75, Plot C is 25 by 100, and Plot D is 25 by 100.

By Mr. Chambers:

Q. You are just reading off page 3 now, that is all?

A. I am reading off page 3 and reading off a print showing the dimensions.

Q. That is all you know about this item of land, is it not?

A. That is the basis of my estimate of this item of land.

Q. And you want to be understood now as testifying that is the fair and reasonable value of that property?

A. In my opinion.

Q. In your opinion?

A. Yes.

Q. With that knowledge that you had?

A. Yes.

Q. The next item is \$320,350. Where did you get that from?

A. I estimated that as being the probable expenditure of this company in bringing together the various small companies, of which it was composed, in getting the rights, in developing its property from an old coal gas plant through various stages up to the present time, and securing the funds, covering the interest and taxes during construction, administrative, legal and miscellaneous general expenses, superintendence, general contractors' expenses and profits.

Q. How much did you allow for preliminary organization, development expense?

1459 A. \$100,000.

Q. Cost of financing? Or are those set forth here in detail?

The Master: No, they are not in there.

A. They are not set forth.

Q. Cost of financing?

A. \$120,350.

Q. That is cost of financing?

A. Yes.

Q. Financing what?

A. Financing this proposition as it existed as of 1904.

Q. You do not know whether they financed anything or not?

A. In my experience with companies of this kind the financing is very, very expensive.

Mr. Neumann: I move to strike that answer out as not responsive to the question.

Q. All I am asking is if they financed anything, if you knew anything that they financed?

A. They must have financed—

Q. What did they finance?

A. They must have financed the cost of the proposition at that time.

Q. What was the proposition?

A. The proposition was a gas company made up of the consolidation of at least two plants and of systems in several territories.

Q. Do you mean it took that amount of money, in your opinion, to consolidate two or three companies—all that money?

A. No, in order to build the plants in the beginning, to rebuild them, and to bring together into a whole the money—not the money of financing, but the money that was financed.

1460 Q. They were already built when they came together.

A. There was building in the beginning. This is the cost of financing the original project and financing the capital necessary to bring them together.

Q. They were already built, the plants.

A. But they were financed. The money had to be raised to build them before they could be built.

Q. That is your idea about it, is it?

A. That has been my experience.

Q. Interest and taxes during construction, how much for that?

A. I had not separated that.

By the Master:

Q. Administrative?

A. I figured for the contracting, administrative, financing—

Q. All the other items?

A. Yes.

Q. Preliminary organization \$100,000, cost of financing one hundred and twenty-five odd?

A. Yes \$100,000.

Mr. Chambers: Haven't you overlooked something there in that item?

Q. How about the rest of these items: have you subdivided them at all?

A. There are three items there, one \$100,000, \$100,000 and \$120,350.

Q. What is the first \$100,000?

A. The expense of consolidation.

Q. Preliminary organization and development?

A. Yes.

Q. What is the next \$100,000?

A. The other items other than financing.

1461 Q. And the financing is the balance?

A. Yes.

By Mr. Chambers:

Q. Did you ever bring together two or three gas companies in this State?

A. I have been a party to it.

The Master: I will not take any more about that. How about franchises and rights, where did you get \$500,000 for that?

Mr. Chambers: Let me ask one more question—if he has not overlooked something in that item there.

The Master: Do not let us waste time on it.

Q. Now franchises and rights, \$500,000.

A. In my experience with small companies and large, as of this early period it cost a good deal to secure franchises. Franchises were dealt in; franchises were regularly bought, sold and dealt in.

Q. Do you mean you had to heel somebody, some political leader or somebody?

A. I have never done anything of the kind, but I have seen franchises bought in the market. They have a real value for purposes of construction and operation.

By the Master:

Q. Colonel Miller, you understand this exhibit is intended to be statement of the cost?

A. Outside of these few items, and those are estimates.

Q. But it is an estimated cost?

A. Yes.

Mr. Chambers: To this company.

The Witness: Yes.

192 Q. To this company?

A. Yes.

Mr. Chambers: The New York & Queens.

Q. How do you estimate that it costs this company \$500,000 for franchises and rights; that is what I want to know?

A. Do you mean the New York & Queens?

Q. Yes.

A. I think the New York & Queens paid for it.

Q. What?

A. I think they must have paid for it when they bought the other companies.

Q. How much did they pay for everything they got?

A. I have forgotten the figures.

Q. Your three figures here—

A. I think it is more than the sum of those three figures.

Mr. Neumann: Of over a million dollars.

Q. Yes, three figures of the property on hand today, which must be been on hand on August 1, 1904, is approximately \$1,130,000, that is \$1,468,000, I think.

A. I think it is something like that the property has cost.

Q. Where did you get that figure from?

A. From the books, the opening entries in the books.

Q. Am I to understand, then, that you took the opening entry

of something over a million dollars and divided that into the classes that you have here?

A. No, I did not, but the opening entry is somewhat higher, to the best of my recollection.

1463 Q. Has your estimate of costs any relation to the book cost as it appears as of August 1st?

A. Not entirely. I just had to estimate those figures, and I did look to see whether the opening entry was fairly comparable with that.

Q. Well, has your testimony of cost any relation to your estimate of value at that time?

A. No.

Q. Is your figure of \$500,000 here in this exhibit the statement of your estimate of value or your estimate of cost?

A. It is my estimate of what it was worth at that time—or what it probably cost the underlying companies—

Q. I don't care about the underlying companies. What I want to get is this: You have given me here a statement which shows the cost to this company, the New York & Queens Gas Company, of property installed since August 1, 1904?

A. Yes.

Q. That you have taken from the books of the company and the vouchers?

A. Except in so far as property existed as of that date.

Q. I am talking about property which was installed after August 1, 1904.

A. Yes. That, your testimony is, is what it actually cost them according to their books, records and vouchers?

Q. Yes, and that was a reasonable expenditure, you say, at the time when made?

A. Yes.

Q. For the material that went in there?

A. Yes.

1464 Q. Taking approximately \$1,000,000 of property on hand August 1, 1904, it would show that about \$900,000, approximately, has actually been put into this property since August 1, 1904?

Mr. Tobin: If your Honor please, don't miss this point, that in 1908, when the ownership of this company changed, that is, when it was taken into the Consolidated Gas Company's system, they established an entirely different basis of cost, so far as their books are concerned?

The Master: I don't know anything about that.

Mr. Tobin: That will be shown.

The Master: What I am trying to do is to get clear in my mind this witness' testimony. His testimony is that according to the books, records and documents that he examined, the New York & Queens Gas Company since August 1, 1904, actually expended an additional plant that is now there approximately \$900,000, and the

that was a reasonable expenditure for the property which it represents.

A. Yes.

Q. That brings me to property on hand now, which must have been on hand August 1, 1904?

A. Yes.

Q. Including the plant and distributing system that was there, then the preliminary organization, and the like, franchises and rights?

A. Yes.

Q. Now, what I want to get clear from you is whether in these figures of \$280,000 approximately for plant and distribution system, \$320,000 for preliminary organization and the like, and \$500,000 for franchises and rights, you are giving me your estimate of value as of August 1, 1904, or whether you are giving me your estimate of what it must have cost the company at that time?

A. That is an estimate of value.

Q. Of value?

A. Yes.

Q. Not of cost?

A. No.

Mr. Chambers: Will your Honor strike it out now?

The Master: I think I have got to ignore it as a statement of cost.

Mr. Chambers: It is terrible to have a thing like that in there.

Mr. Tobin: Very unfortunate.

The Master: Don't I have to ignore it, Judge?

Mr. Ransom: Why, no.

The Master: The witness says it is his estimate of value, not of cost. The value may be entirely different, higher or lower than what it cost.

Mr. Ransom: The rule, as I understand it, is that where you cannot ascertain the actual cost, the actual outlay in creating a certain public utility plant, property or system, that then you have got to take estimates. For example, you give an estimate as of today of the cost of reproducing new, if you could not find book cost. Here is the situation of a plant, a property, a system which has been built up from 1853 down. The only period for which we have complete cost records is from 1904 down.

The Master: Let us see about that, let me interrupt you at that point. In or about the year 1904 the New York & Queens Gas Company purchased either the Newtown & Flushing property, or the stock and securities of the Newtown & Flushing company, didn't it?

Mr. Ransom: Yes.

Q. Now, following the same principle that I followed in the Consolidated case, it cost them something at that time, didn't it?

Mr. Ransom: The situation I think is different from the Consolidated case, unfortunately. In the Consolidated case of course

there was a starting point established by the legislative authority in 1804 under which, by legislative sanction, the sanction of the legislative body for whom the defendants in that case were appearing in the Consolidated case, securities were issued, dealt in, and ever since have been traded in in reliance upon the value established at that time under legislative sanction. The Supreme Court has held, and your Honor held, that under those circumstances that was a starting point.

Mr. Chambers: That is all wrong.

The Master: Don't interrupt.

Mr. Ransom: I do not feel confident that the cost of a public utility property to the last one of a series of companies is the measure of original cost or investment as you call it.

The Master: But you don't get my point. This exhibit was intended to show cost, was it not?

1467 Mr. Ransom: This exhibit was intended to show the actual cost, in so far as it was available, and then as bearing upon—let us say from your point of view—you have got to determine whether the amount which the New York & Queens Gas Company on August 1, 1904, paid for the tangible and intangible properties which it acquired was reasonable or unreasonable, whether it was in good faith—

The Master: Yes.

Mr. Ransom: Now, as bearing on the question of good faith, as bearing on the question of the reasonableness of price, certainly proof as to the value of the property which they acquired at that time is probative in this case.

The Master: Yes, but you don't get my point.

Mr. Neumann: May I not say this?

The Master: No, you cannot say anything just now. I am not going to argue with you the proposition that when you show me that the New York & Queens Gas Company issued certain securities, or paid certain moneys for the Flushing plant in 1904, that you ought not and should not supplement that by some expert or opinion evidence as to the probable value of the plant at that time. I did not say I was going to strike it out—

Mr. Ransom: You said you were going to ignore it.

The Master: His testimony of cost. Do you get my point?

1468 Mr. Ransom: I appreciate the difference of course between the question of what was the cost to this company in August, 1904, and the question of what was the investment in that enterprise up to the August, 1904.

The Master: And what was the value in August, 1904. I purposely used the word "ignore" in the connection that I did, and not "strike it out" for this reason: This Exhibit No. 96 is intended to be and purports to be a statement or summary of the cost of the plant and distribution system of the New York & Queens Gas Company to and including December 31, 1919, and included in that is a statement of the cost of the plant and distribution system acquired by the complainant company August 1, 1904, estimated as of that date.

Mr. Ransom: Yes.

The Master: Now, Mr. Miller, instead of sustaining an estimate of cost as of that time has testified to his estimate of value. Do you get my point?

Mr. Ransom: Yes.

The Master: Now, don't I have to ignore his testimony as establishing a cost as of that time?

Mr. Ransom: No, I don't think so, because in determining what was the cost as of that time of tangibles and intangibles there comes an inquiry whether the given price paid, what elements made it up, whether it was reasonable in amount, whether it represented an acquisition of property which was worth about what was paid for it, whether the investment up to that date probably was at least as much as was paid for it.

1469 The Master: How much was paid for it? There is no evidence in this record as to that.

Mr. Ransom: There is not at the present moment.

The Master: Of course the cost of a piece of property is some evidence of its value, isn't it? That is the rule.

Mr. Ransom: Yes.

The Master: Some evidence of its value. Is there any rule that says that value is some evidence of cost?

Mr. Ransom: Well, where you have an inquiry as to the reasonableness of cost—I think the difference between your Honor and myself is this, your Honor has the impression, and I don't say that it is incorrect, that the criterion of the investment in this enterprise upon which a return is to be computed is the investment of this company in the enterprise. I am not at all sure that that is the rule. I think it is the investment in the enterprise, what has been necessarily expended in building up this enterprise through the years, or as I personally believe the authority requires you to find, what it would cost now to reproduce that kind of an enterprise. But, leaving aside that question, certainly the testimony of what the probable investment and reasonable investment was up to August, 1904, is probative in the absence of the actual books of record, both on the question of showing the probable investment up to that time, and on the question of supporting the opening entries in the books, which is some sum close to a million and a half dollars.

1470 The Master: Mr. Neumann, did you want to say something?

Mr. Neumann: I wanted to have the record clear in this respect: There is a way of proving definitely what this company started with, and that can be proven by taking the balance sheet from the books of the Newtown & Flushing company on July 31, 1904, which will show \$169,135.61, and the very next day, overnight, August 1, 1904, the New York & Queens Gas Company starts with an opening entry of \$1,073,036.37.

The Master: Suppose the New York & Queens in order to acquire that property on August 1, 1904, had to pay \$600,000 more than the book value?

Mr. Neumann: Then there ought to be proof of it in this record.

If they paid it they should be able to show it, and if they did not pay it they should not be entitled to it.

The Master: Mr. Chambers, do you want to say anything in this connection?

Mr. Chambers: Just this. It already appears in evidence what the value of the property of the New York & Queens company was that belonged to the Newtown & Flushing, in the streets and outside the streets. It was only about \$60,000. Here it is, their sworn report.

The Master: Did I have under consideration any motion to strike out?

Mr. Chambers: Yes.

The Master: I will deny the motion to strike out.

1471 Mr. Chambers: Exception.

Mr. Neumann: Exception.

The Master: I don't think you want to spend any more time with this witness.

Mr. Chambers: I do not on those items. These additions—

The Master: He says they are all taken from the books, and you won't get anywhere with cross-examination on that.

By Mr. Chambers:

Q. Who took it off the books, these additions since 1904, who did that?

A. They were taken off by my staff.

Q. You didn't do it?

A. No.

Q. How much of a staff have you got working on that end of it?

A. I haven't any now.

The Master: How many people did you have?

The Witness: I had eight or ten men at different times on this work.

The Master: How many men worked on this end of it?

The Witness: Two.

The Master: What were their names?

The Witness: Graham and Matthews.

The Master: Did you supervise them at all?

The Witness: Yes.

The Master: Did you check it back at all?

The Witness: I checked enough items to satisfy myself—

The Master: That they were doing the work right?

1472 The Witness: Yes.

The Master: You see the answer to this line of cross-examination is that you have that statement, you have your engineers and accountants checking it up, and if you find it is not so you will point it out quick enough.

Q. Now, Mr. Miller, when you estimated your amount prior to August 1, 1904, what unit prices did you put on them?

A. Unit prices as of August 1, 1904.

Q. I didn't ask you that, what unit prices?

The Master: What was it?

The Witness: Oh, excuse me.

The Master: Mr. Chambers wants some dollar signs now. Is it in the statement?

The Witness: No. This is on a sub-contract basis:

3-inch mains 35 cents per foot, cast iron;

4-inch cast iron 45;

6-inch cast iron 60 cents;

8-inch cast iron 90 cents;

10-inch cast iron \$1.15;

12-inch cast iron \$1.30;

11 $\frac{1}{2}$ -inch steel or wrought iron mains 25 cents;

2-inch steel or wrought iron mains 30 cents.

Q. The same for services?

A. $\frac{3}{4}$ -inch services \$13.00 each;

$\frac{1}{2}$ -inch branch services \$9.50 each;

1-inch services \$14.00 each;

1-inch branch services \$10.50 each;

1 $\frac{1}{4}$ -inch services \$15.00 each;

1 $\frac{1}{4}$ -inch branch services \$11.00 each;

1 $\frac{1}{2}$ -inch services \$16.00 each;

2-inch services \$18.00 each.

1173 Q. What was the average length of service just prior to 1904?

Mr. Ransom. The same length as they are now, they have not lengthened.

Mr. Chambers. I thought maybe they went up, too, or lengthened out.

A. About 48 feet.

Q. Whatever sums you have in here for 1904 were taken right from the books, is that it?

A. Yes.

Q. You did not exercise any independent judgment at all?

A. I did. I looked at them to see whether I thought they were reasonable.

Q. You didn't make any changes, did you?

A. I did not.

Q. Just copied from the books?

A. They all seemed reasonable.

Q. I didn't ask you that, I asked you if it was just a copy from the books?

A. They were copied from the books.

Q. Right from the books?

A. Yes.

Q. And the prices, the dollars, were taken right from the books?

A. Yes.

Q. What items are included for labor after 1904?

A. I have not separated labor and materials in the accounts.

Q. What elements of cost are included?

A. All the costs as shown by the books.

Q. Whatever the company put down you put down?

A. Yes.

1474 Q. You don't know how they proceeded, what elements they used, do you?

A. Yes, whatever there is in it is shown here on the books.

Q. Well, is engineering in there?

A. There is a small amount for engineering.

Q. Show me any of that, will you show me where you set down any engineering?

A. On page 48 there is an item, engineering and superintendence on certain items, \$12,974.42.

Q. What items are those on?

A. I cannot tell from this record just what items they are on. The items are shown in the books. All the engineering items shown in the books, as far as I could find them, were brought together on this page 48. My recollection of it is that some of it was in connection with the Douglaston Extension, and some of it in connection with the million-foot holder. That is based on recollection; I did not separate it out of here.

Q. Then these items of cost do cover engineering superintendence and inspection?

A. Only in so far as that \$12,974.42 is included.

Q. What do you mean by including in this paper here some services of the Consolidated Gas Company's staff? Where did you get that from?

A. I got it from the books.

Q. On page 20 you have \$746, services of the Consolidated staff. What staff? Mr. Carter?

A. No, that was the engineering staff of the Consolidated.

Q. Then there is another engineering?

A. That is another engineering item?

Q. So you were wrong when you said that \$12,000 was the only engineering item?

1475 A. I was wrong.

The Master: Well, he didn't say so positively.

Q. On that same page is another item, services of Consolidated and Astoria staff?

A. Yes.

Q. Is that engineering?

A. Yes.

Q. All the way through we find such an item. Is that engineering all the way through, wherever it appears?

A. Wherever it appears it is the engineering staff, yes.

Q. Either in the name of the Consolidated or any of the other companies?

A. It is the Construction Department of the Consolidated Gas Company.

Q. On page 34 is another one; page 35 is another one. They seem to be very large items here, that Consolidated staff. On page 34 it is \$944; on page 35 it is \$693, and so on.

A. A very small item for that size of contract.

Q. What size of contract do you refer to on page 34?

A. That is the details of the holders which cost something over \$100,000.

Q. Who put up this holder?

A. The Bartlett-Hayward Company.

Q. Why does this company have to pay for engineering if the Bartlett-Hayward Company put it up?

A. The Bartlett-Hayward Company was very glad to furnish engineering if they were paid for it; the company preferred to furnish its own engineers.

1476 Q. You said that was a small amount of engineering for that size contract. Now the Bartlett-Hayward Company were doing that work, so why should this company be paying for any engineering? In other words, this engineering hasn't anything to do with the contract, has it?

The Master: Isn't the answer to that question that the Bartlett-Hayward contract did not include engineering?

The Witness: It did not, no.

The Master: Then why don't you say so.

Q. How do you know it did not?

Mr. Ransom: Somebody had to supervise.

The Witness: Because I was familiar with the contract.

Q. That is, the Bartlett-Hayward Company puts up all their holders and lets somebody else do the engineering, is that it?

The Master: The witness didn't say so at all.

Q. Is that the fact?

A. No, it is not the fact.

The Master: Does the Bartlett-Hayward Company undertake a job including superintendence and engineering or excluding it, as the other party may desire?

The Witness: Yes. The engineering on the holder itself is done by the Bartlett-Hayward Company.

Q. What engineering could this possibly be?

A. In this particular case it was the engineering of locating the holder, of deciding on the size, drawing a contract and providing specifications, inspecting the material in the shop as it was erected.

1477 Q. Well, on page 34 you have quite a substantial item for inspection?

A. Inspection of what?

Mr. Neumann: Pipe and steel.

Q. Yes, pipe and steel, on page 34?

A. Yes, that is a mill inspection.

Mr. Chambers: That is all. I move to strike it out again.

The Master: Motion denied.

Mr. Chambers: Exception.

The Master: Is there anything else, Mr. Neumann?

Mr. Neumann: Just a moment—I have nothing.

The Master: Anything else?

Mr. Ransom: Nothing from me.

The Master: Is that the complainant's case?

Mr. Chambers: I would like to spend a little more time with this witness but I don't think we ought to, I think it would be worthless, really.

Mr. Neumann: It would be worse than that, it would be useless.

The Master: Is that the complainant's case?

Mr. Ransom: Complainant rests.

The Master: Are there any motions to dismiss?

Mr. Chambers: Can't we make our motions, it will only take a minute, next time, right at the opening?

The Master: I would rather you make them now.

1478 Mr. Neumann: If you will give us just a moment, we will get together.

May I not say this, may I not renew my motion to strike from the record all of the testimony of the witness Miller upon all the grounds as urged when I originally made that motion and throughout his entire testimony?

The Master: Motion denied.

Mr. Neumann: Exception.

The Master: I don't think I have any power to dismiss anyhow.

Mr. Chambers: Why not dismiss one and give us a chance?

The Master: I haven't any power to dismiss; I am ordered to take the proof and report my opinion.

Mr. Chambers: Will you put on the record that you would like to dismiss?

The Master: That is not the point, I don't want any inference drawn; I think motions to dismiss are useless.

Mr. Neumann: May we not submit that? We have it, but not in proper form now.

Mr. Tobin: We will put it in typewritten form, that is what we will do.

The Master: If you think motions to dismiss are proper in this kind of a case, put them in writing and hand them to the stenographer.

Mr. Tobin: That will be acceptable to the Master? It is quite long.

The Master: Why surely. I don't think I have any power to dismiss, do you?

1479 Mr. Chambers: Well I wish that would be stated on the record and then it will look as if you did not consider it on its merits and it will be over.

The Master: I won't permit any such inference to be drawn from it; I am simply indicating that motions to dismiss are unnecessary. I have got to deny them.

The complainant has proved the cost of making gas, on the evi-

dence as it stands, that it costs them more to make gas than they sell it for or are compelled to sell it for.

The question of invested capital. I don't know as that is especially important at this time, in the light of the record, and I have got to deny the motions to dismiss on the ground that the proof now shows that it costs more to make gas than they get for it.

I think the quicker counsel for the defendants get to the point of meeting the testimony offered by a man like Woods, that it requires so much coal, so much oil, so much labor and so forth, to make a thousand cubic feet of gas, the quicker they will make some headway with me.

We will adjourn now until Thursday, June 3rd, 1920, at 9:30 A. M.

I do not want counsel to have any argument with me hereafter, this is what I intend them to do; I expect the defendants to go forward with their case, from hour to hour and witness to witness and finish it.

I shall expect counsel for the complainant to be prepared, as far as is humanly possible, to cross-examine. If I find that it is going to save time to let you send some table out to have it checked, 1480 I am going to do it and I shall expect the defendants to go on with the next table and put them all in.

Mr. Ransom: If they will give me any tables today or tomorrow, I will have them checked over the holidays.

Mr. Neumann: I would have given them to you a week ago if I had had them ready, and you know that.

The Master: Just mark down that we are adjourned until next Thursday.

Adjourned to Thursday, June 3, 1920, at 9:30 A. M.

Last Complainant's Exhibit—99.

Last Defendants' Exhibit—L.

1481 NEW YORK & QUEENS GAS COMPANY

vs.

CHARLES D. NEWTON, &c., et al.

Before Abraham S. Gilbert, Special Master.

New York, June 3, 1920.

Adjourned by consent to Monday, June 7, 1920, at 9:30 A. M.

New York, June 7, 1920.

Before Abraham S. Gilbert, Special Master.

Met pursuant to adjournment.

Present:

Mr. Ransom, Mr. Vilas and Mr. Goetz, of Counsel for Complainant.

Mr. Chambers, Mr. Tobin and Mr. Cummings, of Counsel for Defendant Newton.

Mr. Neumann, of Counsel for Defendant Lewis Nixon, Public Service Commissioner.

Mr. Neumann: The defendants move to strike from the record Exhibit 30 upon the ground that it has not been properly proven.

The Master: Motion denied.

Mr. Neumann: Exception.

Mr. Neumann: The defendants move to strike from the record Exhibits 52, 53, 54, 55 and 56 constituting the books of account of the complainant company upon the ground that they have been shown to be incorrectly kept, and based upon underlying data which has been incorrectly kept and the errors in the underlying 1482 data have found their way into the books of account. Upon the further ground that the books have not been properly proven and upon all the grounds urged against their admission into the record at the time they were offered and received in evidence.

The Master: Motion denied.

Mr. Neumann: Exception.

The defendants move to strike from the record Exhibits 64 and 65 upon the ground that they purport to be extracts from the books, Exhibits 52, 53, 54, 55 and 56. It affirmatively appears that the underlying data and the books themselves are incorrectly kept and that errors appearing in the underlying data have found their way in and are contained in the books, and upon all the grounds urged against these exhibits at the time of their introduction and receipt into evidence.

The Master: Motion denied.

Mr. Neumann: Exception.

The defendants move to strike from the record Exhibit 77 upon all grounds urged against its introduction into evidence at the time it was offered and received, and upon the ground that the facts contained therein were susceptible of actual proof from the operations of this company if economically and efficiently managed. That the introduction of this exhibit based on hypothesis was erroneous, incompetent and greatly prejudiced the defendants. The Master erred in receiving Exhibit No. 77 into evidence because the facts themselves were easily ascertainable and susceptible of proof by witnesses now or heretofore connected with this company, and the Master thereby dispensed with the degree of proof re- 1483 quired by the decisions in rate cases for the proving of one of the vital and essential elements in a rate making case.

The Master: Motion denied.

Mr. Neumann: Exception.

The defendants move to strike from the record all of the testimony of the witness Alten S. Miller, including his exhibits, upon all the grounds urged during the course of his examination and all of the objections to the introduction of the exhibits prepared by him. If all of his testimony be not so stricken from the record, then the

exhibits should be stricken from the record upon all the grounds urged against their introduction and the reception into evidence and upon the further ground that both the testimony and the exhibits of this witness are based upon hearsay and upon records of the company which have been shown to be incomplete, incorrect and not properly and correctly kept so as to reflect the property and business of the complainant company.

The Master: Motion denied.

Mr. Neumann: Exception.

Mr. Tobin: The defendants move to dismiss the bill of complaint herein on the complainant's evidence, upon the following grounds:

(1) Complainant has failed to show sufficient facts to constitute a cause of action.

(2) Complainant has failed to show any cause of action.

(3) Complainant has failed to show beyond a reasonable doubt that Chapter 125 of the Laws of 1906, in so far as it shows a rate to be charged private consumers for gas in the City of New York at \$1.00 per thousand cubic feet, is confiscatory to complainant, in that it does not allow a fair return on the capital actually invested in the business of making and distributing gas.

(4) Complainant has failed to show beyond a reasonable doubt that Chapter 125 of the Laws of 1906, in so far as it shows a rate to be charged private consumers for gas in the City of New York at \$1.00 per thousand cubic feet, is confiscatory to complainant, in that it does not allow a fair average return on the capital actually invested in the business of making and distributing gas.

(4a) Complainant has failed to show that Chapter 125 of the Laws of 1906, in so far as it shows a rate to be charged private consumers for gas in the City of New York at \$1.00 per thousand cubic feet, is confiscatory to complainant in that it does not allow a reasonable average return upon capital actually expended.

(5) Complainant has failed to prove what it cost to make and distribute gas to its private consumers.

(6) Complainant has failed to prove the amount of capital actually invested in making and distributing gas and upon which it would be entitled to a return.

485 (7) Complainant has failed to show by evidence beyond a reasonable doubt that Chapter 125 of the Laws of 1906 is unconstitutional.

(8) Complainant has failed to show that it has complied with all of the provisions of said Chapter 125 of the Laws of 1906, and furnished to its private consumers gas of a lighting capacity of 22 candles, and of the pressure required by said statute.

(9) Complainant has failed to prove ownership and value of its property other than its real estate.

(10) Complainant has failed to prove the extent of its tangible property in and outside of the streets upon which it is asking for a return.

(11) Complainant has failed to prove the physical or actual condition of its tangible property in and outside of the streets.

(11a) Complainant has failed to establish confiscation beyond reasonable doubt in deliberately refraining from furnishing the books or producing witnesses still alive which would have furnished the original cost of construction of property.

(11b) Complainant has failed to prove that the increase of business will not sufficiently overcome abnormal conditions of operation during the year 1919.

1486 (11c) Complainant has failed to prove operations for an average number of years in determining a fair return. It was error to confine the inquiry to the abnormal year 1919.

(12) Complainant has failed to prove that the company, its plant or properties is efficiently and economically operated and conducted.

(13) Complainant has failed to prove the value of its capital stock and has failed to prove that the same was duly issued. And further was not given for reasonable value of plants and franchises purchased by it and has failed to prove that any of its capital stock was issued for valuable consideration.

(14) Complainant has failed to prove that it has a floating debt and the amount thereof.

(15) Complainant has failed to prove the reasonable value of its property devoted to the gas business.

(16) Complainant has failed to prove that it is entitled to have considered in fixing the amount upon which the return should be based the item of "going value."

(17) Complainant has failed to prove, and in fact upon testimony of its own witnesses it affirmatively appears, that it has not kept its books in accordance with the Uniform System of Accounts.

1487 (18) Complainant has failed to prove by any competent evidence such as is required by the decisions of the United States Courts what its gross operating revenues have been and what its gross expenses have been in the gas making business in the year 1919 or any other year.

(19) Complainant has failed to prove that during no year since its organization in 1904 have the earnings of your orator been sufficient to provide a return of as much as 6 per cent upon the reasonable value of its property devoted to the public use.

(20) Complainant has failed to prove that the reasonable value of its property is in excess of the sum of \$3,000 and therefore this Court is without jurisdiction to hear and determine this suit.

(21) Complainant has failed to show that it has no adequate remedy at law.

(22) Complainant has failed to show by any evidence that the matters and facts alleged in its bill of complaint are in contravention of Section 10, Article I, and also the Fourteenth Amendment of the Constitution of the United States.

(23) The defendants respectfully show that they have not had their day in court such as is guaranteed to them by the Constitution of the United States. Common law proof has been dispensed with despite the fact that the underlying data which finds its way in the books of account, has shown to be erroneous and incorrect, the books nevertheless have been admitted in evidence and this without proper common law proof. The burden of proof has been erroneously shifted from complainant to the defendants, the law and decisions of the United States Courts requiring that complainant has proved its case beyond a reasonable doubt.

(24) That the bill of complaint should be dismissed upon the ground that the City of New York, a proper and necessary party to the action, has not been included as a party defendant and that complainant in the proofs submitted has sought to include and did so include items of disbursement and income derived from the sale of gas to the municipality separate, apart and distinct from that supplied to its private consumers.

(25) That complainant in its proofs has failed to separate and keep distinct and apart the operation of its gas business so far as it affects its private consumers, but on the contrary has included and commingled in both its operating and expense revenues the results of its gas business to both its private consumers and the City of New York.

The Master Motion denied.

Mr Tobin Exception

Mr Neumann I have some motions here on which I respectfully ask the Master to find and forthwith report to the Court as follows:

1489 The Master: I will hear those. Do you mean you are resting?

Mr. Neumann: No, this is at the conclusion of the complainant's case.

The Master: I know, but I cannot make a report until the case is finished.

Mr. Neumann: That may be your Honor's interpretation of it, but we contend that if these facts are true as we state here, that your Honor must then report and find forthwith that there is no cause of action.

The Master: I won't make a report until the case is finished: I won't find anything until the case is finished.

Mr. Neumann: We want to make our record.

The Master: Hand them to the stenographer to be copied in.

Mr. Neumann: The defendants respectfully ask the Master to now find and forthwith report to the Court as follows:

(1) Complainant has failed to show sufficient facts to constitute a cause of action.

(2) Complainant has failed to show any cause of action.

(3) Complainant has failed to show that Chapter 125 of the Laws of 1906, in so far as it shows a rate to be charged private consumers for gas in the City of New York at \$1.00 per thousand cubic feet is confiscatory to complainant, in that it does not allow a fair return on the capital invested in the business of making and distributing gas.

1490 (4) Complainant has failed to show that Chapter 125 of the Laws of 1906, in so far as it shows a rate to be charged private consumers for gas in the City of New York at \$1.00 per thousand cubic feet, is confiscatory to complainant, in that it does not allow a fair average return on the capital invested in the business of making and distributing gas.

(5) Complainant has failed to prove what it does cost to make and distribute gas to its private consumers.

(6) Complainant has failed to prove the amount of capital actually invested in making and distributing gas and upon which it would be entitled to a return.

(7) Complainant has failed to show by evidence beyond a reasonable doubt that Chapter 125 of the Laws of 1906 is unconstitutional.

(8) Complainant has failed to show that it has complied with all of the provisions of said Chapter 125 of the Laws of 1906, and furnished to its private consumers gas of a lighting capacity of 25 candles, and of the pressure required by said statute.

(9) Complainant has failed to prove ownership and value of its property other than its real estate.

(10) Complainant has failed to prove the extent of its property in and outside of the streets upon which it is asking for a return.

1491 (11) Complainant has failed to prove the physical or actual condition of its property in and outside of the street.

(12) Complainant has failed to prove that its plant is efficient and economically operated and conducted.

(13) Complainant has failed to prove the value of its capital stock and has failed to prove that the same was duly issued. And further was not given for reasonable value of plants and franchises purchased by it and has failed to prove that any of its capital stock was issued for valuable consideration.

(14) Complainant has failed to prove that it has a floating debt and the amount thereof.

(15) Complainant has failed to prove the reasonable value of its property devoted to the gas business.

(16) Complainant has failed to prove that it is entitled to have considered in fixing the amount upon which the return should be based the item of "going value."

(17) Complainant has failed to prove, and in fact upon testimony of its own witnesses it affirmatively appears, that it has not kept its books in accordance with the Uniform System of Accounts.

(18) Complainant has failed to prove by any competent evidence such as is required by the decisions of the United States Courts what its gross operating revenues have been and
1492 what its gross expenses have been in the gas making business in the year 1919 or any other year.

(19) Complainant has failed to prove that during no year since its organization in 1904 have the earnings of your orator been sufficient to provide a return of as much as 6 per cent upon the reasonable value of its property devoted to the public use.

(20) Complainant has failed to prove that the reasonable value of its property is in excess of the sum of \$3,000 and therefore this Court is without jurisdiction to hear and determine this suit.

(21) Complainant has failed to show that it has no adequate remedy at law.

(22) Complainant has failed to show by any evidence that the matters and facts alleged in its bill of complaint are in contravention of Section 10, Article I, and also the Fourteenth Amendment of the Constitution of the United States.

(23) The defendants respectfully say that they have not had their day in court such as is guaranteed to them by the Constitution of the United States. Common law proof has been dispensed with despite the fact that the underlying data, which finds its way in the books of account, has shown it to be erroneous and incorrect; the books nevertheless have been admitted in evidence and this
without proper common law proof. The burden of proof
1493 has been erroneously shifted from complainant to the defendants, the law and decisions of the United States Courts requiring that complainant shall prove its case beyond a reasonable doubt.

(24) That the bill of complaint should be dismissed upon the ground that the City of New York, a proper and necessary party to the action, has not been included as a party defendant and that complainant in the proofs submitted has sought to include and did so include items of disbursement and income derived from the sale of gas to the municipality separate, apart and distinct from that supplied to its private consumers.

(25) That complainant in its proofs has failed to separate and keep distinct and apart the operation of its gas business so far as it affects its private consumers, but on the contrary has included and commingled in both its operating and expense revenues the results of its gas business to both its private consumers and the City of New York.

The Master: The Master states that he has no power to make any report or to make any findings until the case is concluded.

Mr. Neumann: Exception.

Mr. Neumann: I offer in evidence two notices to produce, with admission of service by Shearman & Sterling, solicitors for the complainant, dated June 1, 1920.

The Master: What is the purpose of having a notice to produce offered in evidence?

1494 Mr. Neumann: Why, the record ought to indicate that we have asked for certain books.

Mr. Vilas: I object to the reception of the notice.

The Master: I will sustain the objection with this statement. If the complainant does not produce any paper which you desire to offer or to use, I will permit you to prove that you required its production in proper form. Until then I see no sense in marking the notice to produce.

Mr. Neumann: May I ask that they be marked for identification?

The Master: Certainly.

Papers marked Defendants' Exhibits M and N for Identification.

Mr. Neumann: I offer in evidence the papers in support of a motion to quash a second writ of certiorari in the case of the People of the State of New York, ex rel. New York & Queens Gas Company, relator, against Oscar S. Straus, Travis H. Whitney, Charles S. Hervey, F. J. H. Kracke, and Charles Bulkley Hubbell, Commissioners constituting the Public Service Commission of the First District of the State of New York, before the New York Supreme Court, Appellate Division, First Department.

The Master: What is the purpose of that? What do you expect to prove by that?

Mr. Neumann: I expect to prove two things. The first thing is that there is a contradiction there of Mr. Spear's testimony. In the next place, it indicates the contention that I have been trying to make right straight along through the complainant's case, and that is, the unreasonable delay in having complied with the 1495 order of the Public Service Commission of 1915.

The Master: What does that prove? Assuming that I find there was unreasonable delay, what would happen?

Mr. Neumann: Extent of expenditures, the fact that they cannot now charge even into capital invested and seek a return on it, the abnormal amount that they have had to expend by reason of the fact that they delayed and resisted this order of the Commission.

Mr. Vilas: I object to it as incompetent, irrelevant and immaterial and no foundation laid—

The Master: I will let Mr. Neumann make his record.

Mr. Neumann: I am offering the whole record, I am not offering part of it.

The Master: I assume there is no question but what this book handed me is a correct copy of the papers in support of the motion of respondent, Public Service Commission, to quash second writ of certiorari presented by this complainant company in the Supreme Court, Appellate Division?

Mr. Vilas: It is not objected to upon that ground. I would like to state the other grounds of objection. As to the first reason stated by the counsel for the Public Service Commission that it contains contradictory statements, there has been no foundation laid for its introduction for that purpose.

Mr. Neumann: Why, Mr. Spear testified and put in an exhibit as to what it cost.

The Master: Whether it does, or does not, Mr. Vilas, Mr. Neumann thinks he may succeed in getting from me a finding that there was an unreasonable delay in putting in the Douglaston Extension, and that if I find that to be the fact, that he can cut down your investment on which you are entitled to a return.

Mr. Vilas: That is a collateral issue which has no bearing on this case at all which the Master is here to try.

The Master: I am not so sure. I am going to let Mr. Neumann make his record. My judgment at this time is that I shall not attempt to determine the good faith of the complainant company in resisting an order which they contended was improper or unfair, and I shall undoubtedly find, unless something develops to change my mind, that the complainant company, believing itself to be put into a position of expending money unnecessarily and inadvisedly, and believing that the order was improper, had a perfect right to resist that order to the full extent, and that being so it was not required to make the investment ultimately made until it had exhausted its right as a matter of law. However, I will take it and let you make your record.

Mr. Neumann: That may be something to divide up with the stockholders, not with the consumers in a rate case.

Mr. Vilas: Will your Honor also take all of the statements of the Public Service Commission there?

The Master: Statements do not make any proof.

Mr. Neumann: What statements?

Mr. Goetz: May I point out to the Court that all these papers are papers submitted on behalf of the Public Service Commission by witnesses called by the Public Service Commission, and not rulings or findings of the Commission itself; that there are no statements contained there made on behalf of the company—

The Master: I get your point. I had been ruling on the theory that they were the motion papers presented by the complainant company.

Mr. Goetz: No.

The Master: I am not going to take affidavits submitted by the Commission as proof in this case.

Mr. Neumann: May I say this, that there is an affidavit here of William L. Ransom—

The Master: I will take that.

Mr. Goetz: That was made on behalf of the Commission.

The Master: I will take any affidavits presented by the complainant company.

Mr. Vilas: That one was not.

Mr. Neumann: It contains both. Here is an affidavit of Spear, and of Clump.

The Master: You can offer affidavits of the complainant company, and I will take them.

Mr. Neumann: And here is the decision of the Commission. I don't see on what theory—

The Master: I won't take affidavits made by the Commission's witnesses on that application.

Mr. Neumann: No, but this is the opinion of the Commission in that case. That has the same force and effect as law, the opinion of the Commission.

The Master: If you stand on your offer of that entire record as it stands, I will sustain the objection.

1498 Mr. Neumann: Then I will offer it piece-meal. If I had the witness William L. Ransom on the stand, I would put him on the stand and confront him with this affidavit and get him to testify to it.

The Master: I don't know.

Mr. Neumann: I could make him my own witness, and confront him with that.

The Master: This case will not be closed until you have a chance to call Judge Ransom.

Mr. Neumann: I will offer in evidence the affidavit of William L. Ransom in the matter of the People of the State of New York, in Queens Gas Company against Public Service Commission for the First District, the same being verified on the 5th day of March, 1918.

The Master: Was that made on behalf of the complainant company?

Mr. Neumann: This is a part of the record. It is submitted in support of the motion to quash a second writ of certiorari which this Company obtained. Now, if the complainant wishes to offer other papers on the writ of certiorari it may offer them. I am offering the papers that were in opposition.

The Master: Objection sustained.

Mr. Neumann: Exception. I offer in evidence affidavit of Travis H. Whitney in the same proceeding, dated the 5th day of March, 1918.

Mr. Vilas: That is objected to.

The Master: Objection sustained.

Mr. Neumann: Exception. I offer in evidence affidavit of James B. Walker, Secretary of the Commission, dated March 5, 1918.

Mr. Vilas: That is objected to.

1499 The Master: Objection sustained.

Mr. Neumann: Exception. Now, I offer in evidence resolution of the Commission in case No. 2235, directing hearing as to standards in measurements or quantity and power of gas submitted in support of motion dated August 27, 1917.

The Master: Is that resolution adopted by the Commission as a result of a hearing?

Mr. Goetz: No, this is preliminary to the hearing.

The Master: Let me see that.

Mr. Neumann: The difficulty is, if you are going to admit only parts of these papers, there will be no continuity.

The Master: I can't help that.

Mr. Goetz: It contains no findings of the Commission. It simply means that the Commission sat at an ex-parte proceeding and decided to hold a hearing.

Mr. Vilas: It has no relevancy to this proceeding.

The Master: I will receive this.

Mr. Vilas: Exception. On what theory do you receive it?

The Master: It may be connected up in some form to show a violation of law by this complainant company. I don't know anything about it. It is an order made by the Public Service Commission under its authority.

Mr. Goetz: May I point out to your Honor that both by the decisions of the United States Supreme Court, and by decisions of the Supreme Court of the State of New York, as well as by the Public Service Commissions law a public utility against whom an
1500 order is made by the Public Service Commission of this State has the right to contest that order without any penalties being meanwhile visited upon that company.

The Master: I know that.

Mr. Goetz: The statute provides for it, and the State Court has held that any law which forces the company to comply with any order or prevents the company from contesting any order, would be unconstitutional.

The Master: I understand that. This order is a general order for an inquiry. I will take it. I don't see how it has any relevancy to the matter before us, but it may have.

Paper received in evidence and marked Defendants' Exhibit O.

Mr. Neumann: I offer in evidence memorandum of the Commission in case No. 1853, entitled "Memorandum of Commission adopted upon relator's refusal to accept order fixing new dates for commencement of construction." The opinion is by Commissioner Hervey.

Mr. Vilas: I object to that as incompetent, irrelevant and immaterial, no bearing upon any issues in this case; and on the further ground that it is not accompanied by an offer of the same communication from the company to which it purports to be an answer.

The Master: What is the date of this?

Mr. Neumann: I don't know what the date is from that paper. I can find out easily enough by telephoning over, but it must be some time around March, 1918.

The Master: I will take it. The objection is overruled.
Mr. Vilas: Exception.

Paper received in evidence and marked Defendants' Exhibit P.

1501 The Master: It is agreed by counsel that the paper just marked in evidence as Exhibit P was made on or about March 2, 1918.

Mr. Neumann: It is understood that in all these objections they do not run to the fact that the originals are not presented here, is that correct?

Mr. Vilas: That is correct.

Mr. Neumann: I offer in evidence affidavit of Maynard H. Spear in the same proceeding, including Exhibits Nos. 3 and 9 thereto attached, dated February 25, 1918.

Mr. Vilas: I object to that as incompetent, irrelevant and immaterial, first on the ground that it is not material to the issues of the case, or relevant thereto, and on the further ground that no foundation has been laid.

The Master: Objection overruled.

Mr. Vilas: Exception.

Paper received in evidence and marked Defendants' Exhibit Q.

Mr. Neumann: I offer in evidence application of complainant company to the Public Service Commission of the State of New York for the First District, for re-hearing after affirmance in the United States Supreme Court. The case number is 1856, and the application is verified by Lewis B. Gawtry, January 4, 1918.

Mr. Vilas: No objection.

Paper received in evidence and marked Defendants' Exhibit R.

Mr. Neumann: I offer in evidence order of the Commission denying application for rehearing, dated February 1, 1918.

Mr. Vilas: Objected to as irrelevant, and immaterial and
1502 not binding upon the complainant or upon the court, and having no bearing upon the issues.

The Master: Objection overruled.

Mr. Vilas: Exception.

Paper received in evidence and marked Defendants' Exhibit S.

Mr. Neumann: I offer in evidence order of the Commission fixing time for compliance with the final order, dated February 1, 1918.

Mr. Vilas: I object to that upon the grounds already stated.

The Master: Objection overruled.

Mr. Vilas: Exception.

Paper received in evidence and marked Defendants' Exhibit T.

Mr. Neumann: I offer in evidence the opinion of the Commission denying the application for a re-hearing, case No. 1856, dated February 1, 1918.

Mr. Vilas: Objected to as incompetent, irrelevant and immaterial and having no bearing upon the issues.

The Master: Objection overruled.

Mr. Vilas: Exception.

Paper received in evidence and marked Defendants' Exhibit U.

Mr. Neumann: I offer in evidence decision of the Appellate Division of the First Department, dated April 5, 1918, in this proceeding, contained in 182 Appellate Division reports, at pages 666 and 667.

Mr. Vilas: I object to that.

Mr. Neumann: I ask that that be read into the record.

The Master: I am not quite clear that it is the proper method of directing the court's attention to a decision of the court, 1503 but I will take it in order that it may be printed in the record.

Mr. Vilas: Exception.

Opinion received in evidence and marked Defendants' Exhibit V, and is as follows:

"The People of the State of New York ex rel. New York and Queens Gas Company, Relator, v. Oscar S. Straus and Others, Commissioners, Constituting the Public Service Commission of the State of New York for the First District, Respondents.

First Department, April 5, 1918.

Public Service Commission—discretionary power to grant rehearing—when certiorari will not lie to compel rehearing denied by Commission.

Section 22 of the Public Service Commissions Law, which provides that the Commission may grant and hold a rehearing if in its judgment sufficient reason therefor be made to appear, places the matter of a rehearing wholly within the discretion of the Commission, and its order denying an application for a rehearing cannot be reviewed by writ of certiorari if it does not appear that the Commission has abused its discretion.

Motion by the respondents, Oscar S. Straus and others, constituting the Public Service Commission of the State of New York for the First District, to quash a writ of certiorari brought to review an order of the Commission denying relators' application for a rehearing.

John A. Garver of counsel (Shearman & Sterling, attorneys), for the relator.

William L. Ransom of counsel (Godfrey Goldmark with him on the brief), for the respondents.

1504 PAGE J.:

An order was made March 19, 1915, requiring the relator to extend its mains and services to Douglaston. An application was made for a rehearing on April 10, 1915, and denied April 27, 1915. The relator has by writ of certiorari reviewed the order of the Commission, dated the 19th day of March, 1915, and the order of the Com-

mission was affirmed by the Court of Appeals (People ex rel. New York & Queens Gas Co. v. McCall, 219 N. Y. 84) and the United States Supreme Court (245 U. S. 345). The relator by a petition verified on the 4th day of January, 1918, applied for a rehearing of the said proceeding, which application was denied and the relator has caused to be issued a writ of certiorari for the purpose of reviewing the order denying said application. Section 22 of the Public Service Commissions Law (Consol. Laws, chap. 48; Laws of 1910, chap. 480) provides that on such an application "the Commission shall grant and hold such a rehearing if in its judgment sufficient reason therefor be made to appear."

It is clear that the granting or refusing of the application for a rehearing rests in the discretion of the Commission. (City of Buffalo v. Buffalo Gas Co., 82 Misc. Rep. 304, 310; aff'd., 160 App. Div. 914, on opinion below.) Clearly, this writ could not bring before us the original determination of the Commission embodied in the order of March 19, 1915, as that order has been exhaustively reviewed by the courts. The sole question before us, therefore, is the disposition of the motion for a rehearing. That matter resting in its discretion, and as it does not appear that the Commission has abused its discretion, the motion to quash the writ should be granted, with fifty dollars costs and disbursements.

Clarke, P. J., Smith, Davis and Shearn, J.J., concurred.

Motion to quash writ granted, with fifty dollars costs and disbursements. Order to be settled on notice.

Mr. Neumann: I will call Mr. Spear.

MAYNARD H. SPEAR, recalled in behalf of the defendant, testified as follows:

Direct examination.

By Mr. Neumann:

Q. Mr. Spear, did the New York & Queens Gas Company in the year 1910 issue any securities of any kind?

A. No.

Q. Did they in the year 1909?

A. I do not think so.

Q. Is it not a fact, Mr. Spear, that in the year 1910 your company issued securities up to the amount of \$66,000?

A. I am not sure of that.

Q. I do not want to mislead you; your reports show you did?

A. That may be; I had nothing to do with the books at that time.

Q. Who would know?

A. Mr. Snyder, I guess.

Q. Is he with your company now?

A. No.

1506 Q. No one else outside of Mr. Snyder would know?

A. I presume that our Board of Directors at that time would know about it.

Q. Did you not sign the reports to the Public Service Commission for that year?

A. Of 1910 and 1909?

Q. 1910.

A. I do not recall.

Mr. Neumann: I will have to withdraw this witness; I did not think there would be any question about admitting what I wanted to prove.

BENJAMIN COHEN, a witness called in behalf of the defendants, being duly sworn, testifies as follows:

Direct examination.

By Mr. Neumann:

Q. Mr. Cohen, you are connected with the Public Service Commission of the State of New York for the First District, are you?

A. Yes.

Q. In what bureau?

A. The Bureau of Statistics and Accounts.

Q. Dr. Weber is at the head of that bureau?

A. Yes.

Q. You obtained your present position as the result of an examination and appointment from the Civil Service list?

A. Yes.

Q. How long have you been with the Public Service Commission?

A. A little over two years.

1507 Q. And always in the Accounting Department?

A. The same department.

Q. You were a witness and prepared similar tables to those that you intend to introduce in this case, in the case of the Consolidated Gas Company?

A. I was a witness in the Consolidated Gas Company and prepared tables of production and costs.

By the Master:

Q. Have you prepared tables here of production and costs?

A. Some of them.

By Mr. Neumann:

Q. You prepared other tables also?

A. Yes.

Q. Those tables you prepared here are all taken from the books, are they?

A. They are all taken from the books except where we took any information anywhere from outside the books we noted the fact on the statement itself.

Q. So that where there is no indication upon the statement itself every figure is taken from the books of the company?

A. That is correct.

Q. Or its predecessor?

A. Yes.

Q. Take the first table, Schedule No. 1. What does Schedule No. 1 purport to show?

A. Schedule No. 1 is a comparative balance sheet from July 1, 1900, to August 1, 1904, shows the balance sheet year by year.

Q. Of what company?

A. Of the New York & Queens

Mr. Vilas: I move that the answer be stricken out, and I 1508 object to the present line of examination first on the ground that the witness has not been qualified; it has not been shown what his business is or his position, second, on the ground that there is no supporting evidence for these so-called tables which I have not seen, I do not know what they are, he is characterizing the contents of them improperly and has not shown the source, nothing in evidence to support them. We were held to a rigid technical proof.

Mr. Neumann: That I must object to most strenuously, rigid proof.

By the Master

Q. The answer to it is this, that this table, Schedule No. 1, purports to be a tabulation of certain books of the Newtown & Flushing Gas Company?

A. Yes.

Q. Those books you found in the possession of this plaintiff company?

A. They have been furnished me by the company.

The Master: You will have to offer the books in evidence before I can let you prove tabulations.

Mr. Neumann: That being so, I must respectfully except to your Honor's ruling, and under legal duress and compulsion I will offer those books but not under any other circumstances because being books of the plaintiff they are declarations against interest and we are not compelled to produce them. A simple summary of them is sufficient here for our purposes.

The Master: I will not let you prove the tabulations unless the books are in evidence.

1509 Mr. Neumann: I now spread upon the record Defendants' Exhibits M and N, for Identification.

The Master: The application is denied.

Mr. Neumann: Exception.

The Master: What books do you call for there?

Mr. Neumann: I call for Ledger No. 1 and Journal No. 1 of the Newtown & Flushing Gas Company.

The Master: Let us see if they are here.

Mr. Vilas: They are in court.

The Master: Produce them.

Mr. Vilas: They are produced.

Mr. Neumann: I offer this in evidence now as I before stated under legal duress and compulsion.

The Master: I am not compelling you to, Mr. Neumann. I am not requiring you to offer them in evidence. I am simply telling you I cannot take a tabulation unless the books are here.

Mr. Neumann: I claim we have the right to.

Mr. Goetz: You ought to take your exception and rest on that.

Mr. Neumann: Why? If I am wrong, nothing that I say now will help, and if I am right everything that I say now will help.

The Master: Are you offering that book in evidence?

Mr. Neumann: I am offering Ledger No. 1 of the Newtown & Flushing Gas Company.

The Master: Any objection?

Mr. Goetz: We object on the ground that it is incompetent, immaterial and irrelevant, on the ground that the book has not been proved. It is a book kept by some other corporation than the plaintiff; it is in no way binding upon the plaintiff; the plaintiff assumes no responsibility for its contents or what the history of the New York & Flushing Gas Company may have been at all upon this plaintiff and it is incompetent, immaterial and irrelevant to any issues presented by the plaintiff.

The Master: Objection overruled.

Mr. Goetz: Exception.

Mr. Vilas: Why does your Honor take in ancient history of something that has nothing to do with the issues here?

The Master: Because I think I have got to go into ancient history to determine the facts in this case.

Marked Defendants' Exhibit W

Mr. Neumann: Under the same circumstances and conditions I offer Journal No. 1 of the Newtown & Flushing Gas Company.

The Master: Do you offer it?

Mr. Neumann: Certainly.

The Master: Never mind the circumstances and conditions. I just want to know whether you are offering the book. If you do, I take it counsel make the same objection to this book as the last one, and the same ruling.

Mr. Goetz: And the further objection to the qualified offer of the Public Service Commission document.

The Master: Yes.

Marked Defendants' Exhibit X

1511 By Mr. Neumann

Q. Mr. Cohen, this Schedule A is a compilation of Defendants' Exhibits W and X just offered in evidence, is it not?

A. You mean Schedule No. 1?

Q. Yes.

Mr. Goetz: I object to that question on the ground that it is too general; it does not identify what the witness has done with anything in the books. He is asked is it a compilation of books; that does not at all describe the nature of the work done by this witness in preparing his statement or to show the extent to which it was a compilation or the extent to which the witness applied his own judgment in eliminating or adding.

Mr. Neumann: That is all cross-examination.

The Master: Objection overruled.

Mr. Goetz: Exception.

A: Yes; that is correct.

By the Master:

Q: What I want to get at, Mr. Cohen, is this: Does this purport to be more than the balance sheet as taken from these books?

A: Only such accounts as enter into the balance sheets are taken in this statement here.

Q: You did not find a balance sheet in these books?

A: I found the accounts just as they are on this paper which composes the balance sheet shown here.

Q: You did not find a balance sheet in this form in these books?

A: No ledger contains the balance sheet in this form.

1512 Q: I did not ask you that, there is not any balance sheet in these books?

A: No; there is no balance sheet.

Q: What you have done is to take the various accounts that you found in these books and have set up a balance sheet?

A: That is correct.

Q: That is all that this purports to be?

A: That is all.

Mr. Neumann: I offer Schedule No. 1 in evidence.

Mr. Vilas: May we have an opportunity to see it before we make any objection.

The Master: Yes.

Mr. Goetz: That is objected to on the ground that it is not competent, relevant or material; on the ground that the witness has attempted to make annotations of the books of this company. There is no proof before the Court of the fact that there were books of account kept by this company.

The Master: Wait a minute; as I understand it, these are books that were handed to this witness as books of the Newtown & Flushing company in the possession of this plaintiff company.

Mr. Goetz: With no statement that they were the books of this company because we do not know.

The Master: They are the books that you have in your possession as being books of the Newtown & Flushing company, are they?

Mr. Goetz: That is what we have. We have a book which was taken over from the Newtown & Flushing. Whether it is a comp

1513 or a partial book, or whether it is correctly kept or incorrectly kept, we have no knowledge, and we make no assurance to this Court or to the witness.

The Master: I understand that, but these books, for whatever they may be worth, are books that were kept by the Newtown & Flushing and turned over to your company when you took over the Newtown & Flushing?

Mr. Goetz: We know they were books in the possession of that company. That they were kept by the company, we do not know.

The Master: They are the books that were turned over to you as books of the Newtown & Flushing?

Mr. Goetz: Correct. The witness has an annotation here, the ledger reads, "Whitestone Gas Company, et cetera." That is a comment of the witness himself, without any foundation for it.

The Master: Strike that off this exhibit.

Mr. Neumann: I must object to that, that being a part of their books and their records.

The Master: I will not allow it. You can ask him a question that will bring that out.

Mr. Goetz: With regard to the other notes, B, C, D and E, there is one here "Transfers to Meters, Mains Service, and so forth, in April, 1904." That is a deduction of the witness himself, and it does not appear as a direct entry in the books.

By the Master:

Q. I do not understand that to be so?

A. No; that is shown on the books as a transfer in the regular bookkeeping method of making transfers.

1514 Q. In these very books of the Newtown & Flushing?

A. In these very books of the Newtown & Flushing.

By Mr. Goetz:

Q. And a cross-reference showing the transfer?

A. An a cross-reference showing the transfer.

By the Master:

Q. Now, this note D, does that appear in this book?

A. The statement as I have it here does not appear the way I have it here, but the fact of the issue to the College Point company is taken from the Journal entry. This fact was taken from the Journal entry.

Q. In evidence?

A. In evidence.

Mr. Goetz: We further object on the ground that these qualifications which the witness has inserted in footnotes have not been shown by any specific portions of the books which have been identified by the witness, from which they were taken.

Mr. Neumann: That is a question for cross-examination.

The Master: Objection overruled.
Mr. Goetz: Exception.

Marked Defendants' Exhibit Y.

The Master: Wait a minute until I get this clear in my mind.

Q. As I understand your testimony with reference to the Exhibit Y, Mr. Cohen, it is that the books of the Newtown & Flushing Gas Company, in evidence, show the various accounts on July 1, 1900, showing total assets of \$405,000, is that correct?

A. 406.

1515 Q. 406 is it?

A. Yes.

Mr. Neumann: \$406,000.

Q. That included an item of \$203,460 for Franchises, good will and so forth?

A. That is correct.

Mr. Neumann: That is right.

Q. Those same accounts in 1901 total \$622,000?

A. That is correct.

Q. \$622,870.09, is that correct?

A. That is right.

Q. I see that the Franchises and Good Will account was increased from \$303,000 odd to \$485,000 odd.

A. That is correct.

Q. How is that increase represented on the exhibit?

A. That is explained further on.

Q. I want it explained here. That is the trouble with these exhibits: I have one statement, then I have to look at another statement, then I have to look at another cross-statement. I want to know in this connection, now.

Mr. Neumann: The underlying statements cover them all.

The Master: I do not like these underlying statements. I want to know.

Mr. Goetz: Might I interrupt in order to clear that up now?

The Master: No.

Mr. Neumann: May the examination be suspended a minute while I go out and telephone?

The Master: Yes.

(Mr. Neumann withdrew and returned.)

1516 The Master: Are you ready?

Mr. Neumann: Yes.

Q. What I want to know, Mr. Cohen, is what entry there is on these books, and where I will find it, showing the increase in Franchises and Good Will item from \$303,000 odd to \$485,000 odd, from 1900 to 1901?

A. You will find that in the account called Franchises and Good Will, consisting of several debits and possibly some credits.

Q. What are they? I want to know what they are now.

Mr. Neumann: May I say to the Master that this is all explained in another exhibit?

The Master: I do not care about it, I want to know what it is now. When this schedule comes in I want to understand it and know what it means.

A. There is a debit in March, 1901, called College Point Merger, \$183,254.67.

Q. What do you mean a debit?

A. Charged to that account.

Q. What?

A. Charged to that account.

Q. College Point Merger?

Mr. Neumann: Why not get the account; that shows it.

Mr. Goetz: That is not an accurate description, because there is more than that.

Q. On what page of the Journal is that?

A. Page 45.

Mr. Neumann: And here is the Ledger. Now let him explain it.

Q. Now tell me what the books show and where they show it?

A. On March 1st, 1900, there is a debit College Point Company, at folio 45 of the Journal, \$183,254.67. In July of the same year, Sundry Debtors, College Point, folio 63, \$290.

Q. Of the Journal?

A. Of the Journal.

Q. Did you analyze those accounts to see how that \$183,000 was paid?

A. The \$183,000 was paid, and it is shown how it was paid on our table No. 11, which I—

Q. I do not care about your Table No. 11, I want to know how it paid.

A. In the Journal on page 45—

Mr. Neumann: One minute, Mr. Cohen. If the Court please, I must except to the disjoining and disconnecting of our proofs. We have prepared our schedules here, and believe that they run along in a clear, concise and orderly fashion.

The Master: But my mind does not run in that concise and orderly fashion. My mind runs in a different kind of concise and orderly fashion. I want to know now.

Mr. Neumann: Exception. If your Honor will look at Schedule 11 you will see the whole thing.

The Master: I have the books in front of me and this witness has given me a tabulation. I am going to find out now what explanation there is for the increase from \$303,000 odd to \$485,000 odd, and how it was paid.

The Witness: I will explain it.

Mr. Neumann: I must respectively except to that.

Mr. Goetz: And I wish to move in behalf of the complainant that the defendants' Exhibit Y be stricken from the record, on the ground that the examination of the witness already discloses that this is not a competent method of proving the cost of this property to the complainant, or any property which the witness has attempted to set out in a statement which he has entitled "Balance Sheets of the Newtown & Flushing Gas Company, 1900 to 1904."

The Master: Motion denied.

Mr. Goetz: Exception.

Q. I have just one question now, Mr. Cohen. You say and I see here at folio 45 of the Journal the item Franchises and Good Will \$183,254.67.

A. That is correct.

Q. I want to know whether you found in either of those books, or any other books, that the New York & Queens paid that amount of money in cash or by way of securities to the Newtown & Flushing Company?

A. The journal entry right in front of you on page 45 indicates an issue of \$97,000 of Treasury Stock and \$97,000 Treasury Bonds as payment for the assets shown in the column preceding it.

Q. Including this \$183,000?

A. Including that \$183,000.

Q. And that was issued at par, was it?

A. Issued at par, I believe.

By Mr. Neumann:

Q. Well, you do not know that of your own knowledge, Mr. Cohen?

A. I do not, no.

Q. All you know is what you have taken from the books of account?

A. Judging from the books.

1519 By the Master:

Q. And the same way for the years 1902, 1903 and 1904, you have taken off the same items as they appeared from the books and set up the asset side of this balance sheet?

A. Yes, sir.

Q. The liability side of the balance sheet you likewise took from these books?

A. That is correct.

Q. During each of the years?

A. Yes, sir.

Q. And you state these figures that you have put down here are correct?

A. They are correct.

Q. As taken from the books?

A. As taken from the books.

Q. And the totals are correct?

A. The totals I believe to be correct.

The Master: Go ahead with your next schedule.

Mr. Goetz: Do I understand by the ruling of your Honor, if I may make the inquiry, that your Honor indicates a view that the defendants are now being permitted to prove the cost of any property to the New York & Queens Gas Company?

The Master: Yes.

Mr. Goetz: Certainly this is not the way of proving the cost of the New York & Queens Gas Company, because the New York & Queens Gas Company never made any of these payments, never assumed any responsibilities, and do not even know what these are for.

The Master: We will see when we get through. Next question, Mr. Neumann.

1520 By Mr. Neumann:

Q. Schedule 2-A, Mr. Cohen—did you prepare that?

A. I prepared it or had it prepared under my direction.

Q. What was that answer?

A. I prepared it or had it prepared under my direction.

Q. And what does that purport to show?

A. That shows the balance sheets from August 1, 1904, to August 1, 1908, and December 31, 1908, up to December 31, 1913, of the New York & Queens Gas Company, taken from the ledgers, journals, or any record underlying those, of the New York & Queens Gas Company.

By the Master:

Q. Well, what records underlying them?

A. Well, they may have been—I do not know that they are, but there may have been a reference to a subsidiary book like the Sundry Debtors' Blotter, or to a monthly report, perhaps, from which the Journal entries are made.

Q. What I want to know is whether these figures here are tabulations of these books.

A. They are.

By Mr. Neumann:

Q. And so far as you know they are correct?

A. So far as I know——

The Master: No, not that, but are they correct?

Mr. Goetz: We object to that.

Q. I mean are they correct?

A. They are.

Mr. Goetz: We object to that question.

The Master: To the best of your knowledge?

1521 The Witness: They are.

Mr. Goetz: We object to the question and move that the answer be stricken out on the ground that the books to which the witness has referred, and as to which he attempts to testify to the correctness of the books, are not before him and not before counsel for the complainant, have not been in any way presented to the Court and not in evidence.

The Master: But this schedule is not going in evidence until those books are in.

Mr. Neumann: Now I offer this schedule in evidence.

Mr. Vilas: Objected to.

The Master: Objection sustained on the ground that the books on which the schedule is based are not in evidence.

Mr. Neumann: Then I take it by that your Honor intends to force the introduction by me of these books in evidence, the same as before?

The Master: Not at all. You do not have to offer this or offer the books. I am not going to force you to do anything; do as you please. What books do you want? Have you got those books here now?

Mr. Vilas: They are produced.

Mr. Neumann: As I before stated, under legal duress and compulsion I now introduce in evidence Ledger No. 1 of the New York & Queens Gas Company.

The Master: It will be marked.

Mr. Goetz: We object to that on the ground that the book does not relate to any matters in issue in this case; that the issues presented to the Court are as to what is the value of the property
1522 of the company, as of the time that the Court hears this case, that the offer with a qualification, which is a gross reflection upon the conduct of the Court, might leave the impression upon the record that counsel is here being compelled to do something which nothing but force or violence can compel him to do, and with a record of that kind before the Court we would have a trial like unto that in a Kentucky murder case.

The Master: Do not worry about Mr. Neumann's statement of offering these things under compulsion. The record shows that the Master has not compelled Mr. Neumann to offer anything. He takes the view that I am in effect forcing him to offer them because I will not take his Schedule 2-A unless I have the underlying basis upon which the schedule is founded. He can call it anything he pleases.

Mr. Neumann: As before stated, if I am right, I am right in offering them this way. If I am wrong, I am wrong in offering them in this way.

The Master: The objection is overruled and I will receive the book.

Mr. Goetz: Exception. The Court has no power to accept offer upon any other basis than those that are made.

Marked Defendants' Exhibit Z.

The Master: Next offer, if you have any.

Mr. Neumann: General Ledger No. 2 of the New York & Queens Gas Company, upon the same conditions as the previous one.

The Master: Any objection to that?

1523 Mr. Vilas: Same objection.

The Master: Overruled.

Mr. Vilas: Exception.

Marked Defendants' Exhibit A-1.

Mr. Neumann: General Ledger No. 3 of the New York & Queens Gas Company.

Mr. Vilas: Is that offered?

Mr. Neumann: I offer that book upon the same conditions as the previous offer.

Mr. Vilas: Same objections.

The Master: I do not recognize any conditions, Mr. Neumann. You either offer the book or do not. You can say it is under duress or compulsion or anything you like, but you cannot offer the book under conditions.

Mr. Neumann: Then I offer the book under duress and compulsion.

The Master: Under what you contend is duress and compulsion.

Mr. Neumann: Under what I contend is legal duress and compulsion.

Mr. Goetz: Same objection and exception.

The Master: Objection overruled.

Marked Defendants' Exhibit A-2

Mr. Neumann: I offer Operating Expense Ledger No. 1 of the New York & Queens Gas Company. I understand that General Ledger No. 4 of the New York & Queens Gas Company has already been offered in evidence by the complainant.

Mr. Vilas: As Complainant's Exhibit No. 52.

The Master: And is Complainant's Exhibit No. 52.

Marked Defendants' Exhibit A-3.

1524 Mr. Neumann: I offer in evidence Operating Expense Ledger No. 2 of the New York & Queens Gas Company.

Mr. Vilas: Operating Expense Ledger No. 2, Complainant's Exhibit 54, is produced.

The Master: It is already in evidence.

Mr. Neumann: I offer in evidence Journal No. 1 of the New York & Queens Gas Company, the same being under what I consider and claim to be legal duress and compulsion.

Mr. Goetz: Same objection.

The Master: Same ruling.

Mr. Goetz: Exception.

Marked Defendants' Exhibit A-4.

Mr. Neumann: I offer Journal No. 2.

Mr. Goetz: Same objection.

Mr. Neumann: I offer that under what I contend and claim to be legal compulsion and duress.

The Master: Objection overruled.

Mr. Goetz: Exception.

Marked Defendants' Exhibit A-5.

Mr. Neumann: I offer Journal No. 3 under what I contend and claim to be legal duress and compulsion.

The Master: Same objection, Mr. Goetz?

Mr. Goetz: Same objection.

The Master: Overruled.

Mr. Goetz: Exception.

Marked Defendants' Exhibit A-6.

Mr. Neumann: I offer Journal No. 4.

The Master: Same objection, Mr. Goetz?

Mr. Goetz: Same objection.

The Master: Overruled.

Mr. Neumann: I offer that under what I contend and claim to be legal compulsion and duress.

1525 Mr. Goetz: Same objection.

The Master: Mark it.

Mr. Goetz: Exception.

Marked Defendants' Exhibit A-7.

Mr. Neumann: Then I offer in evidence Schedule a-A.

Mr. Goetz: We object to this document on the ground that it has not been shown that this is correctly taken from the books of account of the company, that it correctly groups the various items which are given and denominated Balance Sheets, when no such denomination appears in the books of account of the company; that the witness here by a number of notes has attempted to place his own deductions and his own judgment upon various things in the books, as, for example, using here a title "Other Fixed Capital," when no such account appears in the books of account of the company; that the issues before the court do not involve the matters purported to be set forth in this statement, and that the statement itself is irrelevant, immaterial and incompetent.

The Master: Overruled.

Mr. Goetz: Exception.

Marked Defendants' Exhibit A-8.

Q. Mr. Cohen, coming back to Exhibit Y, Exhibit Y contained a note "The ledger reads Whitestone Gas Co. No consumers' accounts receivable were taken over from the predecessor owner." Where did you obtain that note from the books?

The Master: I struck that note out, you know.

Mr. Neumann: Yes, we are having him testify to it now. You said that we could show the situation.

1526 The Master: Yes.

A. The first sentence of the note came from the books.

Q. What books?

Mr. Goetz: I object to that, if your Honor please. Let the witness specify what page of the book any note appeared.

Mr. Neumann: I am asking him that now.

The Master: He is asking for the books.

Q. What books?

Mr. Goetz: He is asking for the name of the book. Let him turn to the page and he will find it.

A. Let me have the ledger and I will give the page number.

Mr. Vilas: What one?

The Witness: Ledger No. 1 of the Newtown & Flushing (takes book). That is shown on page 207 of the Newtown & Flushing ledger No. 1, Exhibit W.

Q. Defendants' Exhibit W?

A. Yes, at the top of the page.

Mr. Goetz: We object to the offer of that note in evidence, as I assume it will be, on the ground that this page 207 of Exhibit W is—

The Master: I took that part of the note, "The Ledger reads Whitestone Gas Co." That part I took. What I struck out was, "No consumers' accounts receivable were taken over from the predecessor owner." That is all I struck out.

Mr. Neumann: Well, we thought you struck out the whole thing.

1527 The Master: No, I permitted the statement to read, "The ledger reads Whitestone Gas Co., as Note A against that item. What I struck out was, "No consumers' accounts receivable were taken over from the predecessor owner."

Mr. Goetz: May I have that physically marked as an exhibit so it does not appear and be misleading afterwards?

The Master: Yes, I understood it was taken out. I struck it out in my copy. Strike it off the copies furnished, too.

Q. In Exhibit Y, where did you obtain the note "No consumers' accounts receivable were taken over from the predecessor owner?"

Mr. Goetz: I object to the form of the question.

The Master: I will have to sustain that objection. There is no such note on Exhibit Y. Why don't you ask the witness, do you or do you not know from your inspection of the books, Mr. Cohen, whether consumers' accounts receivable were taken over by the New York & Queens from the Newtown & Flushing Company?

Mr. Goetz: I object to that, because that is not what the item relates to. It relates to the question whether the Newtown & Flushing Gas Company took some over from the Whitestone Gas Company. He cannot know. There is not any basis for any such knowledge.

The Master: Do the books show, one way or the other, whether any receivables were taken over by the Newtown & Flushing from the Whitestone Company?

Mr. Goetz: I object to that, too, because the witness has only examined the ledger and has not examined what might be 1528 called the consumers' ledger, or anything of that kind.

Q. Do the books in evidence show it?

A. The books show no consumers' accounts receivable taken over—that is, the Flushing books, no consumers' accounts receivable taken over from other companies, which of course include the Whitestone.

Mr. Goetz: I object to the question and move to strike out the answer, because it was not responsive to the question. He says the books do not show these accounts were taken over. The books do not purport to show the details of the consumers' accounts, and he made no examination of any ledgers or any other book which would disclose what the consumers' accounts were.

The Master: Objection overruled and motion to strike out denied.

Mr. Goetz: Exception.

Q. I direct your attention, Mr. Cohen, to Defendants' Exhibit A-8, and your attention to the footnote there under the letter "A."

Mr. Goetz: Is that the original of the exhibit which was put in?

Mr. Neumann: Yes.

Mr. Goetz: Can we not have a copy so as to follow this? Or let us have the original and let the witness use the copy.

Mr. Neumann: All right, let him have the original.

(Witness hands original exhibit to counsel.)

Q. Where did you obtain the information upon which that note is based?

A. The ledger shows that construction account, as I state here, transferred at the dates that are shown here, to the real 1529 estate and building account.

The Master: All these notes, A, B, C, D and E, are notes of statements of items appearing in the books, just as you have given them?

The Witness: Note A, yes, and note B is taken from the fact that—I will have to read the language to be able to tell just how it is done. The total of the item to December 31st has been split into so and so. In the year following, that is following December 31st, 1908, that account is split up into two accounts on their books and I note that as a fact here in order to show the comparison year by year. Note C, on their books they show an account Treasury Bonds, \$1,000,000. I noted that in order to show the—I deducted from that the—on the books they show treasury bonds of \$250,000, which taken from the bonds account will leave the bonds

outstanding \$750,000. That is just a short cut in order to save space and make it out more clearly.

Q. In other words, if there were a million dollars' worth of bonds and you found \$750,000 in one, you knew the balance must be \$250,000?

A. Well, I found on the books in the bonds account a million dollars and I found the treasury bonds \$250,000. Naturally the balance outstanding is \$750,000. Note D, I tried to get the meaning of that account, and from what I could see it is apparently a misnomer and apparently represents the prepaid taxes.

By the Master:

Q. Taxes accrued, you mean?

1530 A. Taxes accrued.

Q. You say that is a misnomer for prepaid taxes?

A. Apparently it is—

Q. You know better than that; you know they set up a tax account, do you not?

A. But the taxes accrued is a liability.

Q. You know perfectly well what that means, do you not?

A. If I find the amount on the liability side I would state that is not a misnomer—

The Master: I will let it stand for what it means.

Mr. Vilas: We move to strike the note out as a pure conclusion.

The Master: No, I will let it stand.

Mr. Neumann: It is on the assets side.

The Witness: It is on the assets side and I do not see where the taxes accrued is a liability account on the books.

Q. I see what you mean.

A. Being on the assets side—

The Master: I see what you mean.

Mr. Neumann: How can it be taxes accrued?

The Master: I understood it, I said.

The Witness: That is my deduction.

Q. Note E you have already explained, book liability less the treasury bonds.

A. Yes.

The Master: You have prepared another schedule 2-B?

By Mr. Neumann:

Q. Yes, 2-B likewise you have prepared from the books that have just been offered in evidence?

A. That is correct.

1531 Q. And this schedule is correct, is it?

A. That schedule is correct to the best of my knowledge and belief.

Q. This Schedule 2-B is the balance sheet from December 31st, 1914, to December 31st, 1919, the one just immediately offered being for prior years?

The Master: I know what the one just offered is.

Q. Is that correct?

A. That is correct.

Mr. Neumann: No. I offer this in evidence.

Mr. Goetz: Let me see that, please. (Takes paper.)

Complainant objects to this statement on the ground that the basis for the preparation of it has not been shown, on the ground that it embraces questions with regard to property or accounts of the company prior to 1919, and not within the issues in this case as presented by the complainant, or presented by the answers of the defendants; and that the statement itself is not material, relevant or competent as proof in this case.

The Master: Objection overruled.

Mr. Goetz: Exception.

Marked Defendants' Exhibit A-9.

Mr. Neumann: May I not call the Master's attention to the fact of the understanding with Judge Ransom, that the objection that it was not within the pleadings was not a valid one, for the reason that we did not want to waste any time in setting up any affirmative defenses.

1532 The Master: The record shows the statement of Judge Ransom. I have not raised any question about it, and I was the one who raised the point. Judge Ransom waived it, practically.

Mr. Neumann: Evidently now counsel has raised that point by making it part of his objection.

The Master: No, he does not mean to raise any point that Judge Ransom has waived. Judge before you leave it, these Notes A, B, C, D and E, on Exhibit A-9 are notes stating correctly what you found in the books?

The Witness: That is correct.

Q. Mr. Cohen, have you likewise prepared a schedule which you have numbered 3?

A. I have.

Q. What does that schedule purport to show?

A. That shows the detail of the account materials and Supplies, that is, the materials and supplies on the schedules 2-A and 2-B.

Q. And in the first column you have set forth the various accounts, have you?

A. That is correct.

Q. And in the next column the amount expended for that material for each year?

A. No, in the other column—

The Master: The balances at the times stated in each year.

Mr. Neumann: Yes.

The Witness: 1904 to 1918.

The Master: 1904 to 1908 on August 1st, and thereafter December 31st; is that correct?

The Witness: That is correct.

1533 Q. And this schedule is correct, is it?

A. To the best of my knowledge and belief it is.

Mr. Neumann: I offer it in evidence.

The Master: Those figures are taken from the books?

The Witness: These figures are taken from the book?

Mr. Neumann: I offer it in evidence.

Mr. Goetz: The same objection.

The Master: Same ruling. It will be received as Defendants' Exhibit A-10.

Mr. Goetz: Exception.

Marked Defendants' Exhibit A-10.

Q. Mr. Cohen, likewise have you prepared Schedule 4-A?

A. I have.

The Master: 4-A and 4-B are the same things, except that you have subdivided the period before and after December 31st, 1908, have you?

The Witness: That is correct.

The Master: Make your questions read as to 4-A and 4-B.

The Witness: Pardon me a minute, 4-A and 4-B are not alike in respect, in that the accounts shown from 1905 to December 31st, 1908, differ insofar as the names in those accounts are concerned, set up from 1909 to 1919.

The Master: Yes, but otherwise you have set up the revenues and expenses of the gas business as you have taken them from the books?

The Witness: That is right.

1534 The Master: You have not adjusted any figures?

The Witness: No figures were adjusted here.

The Master: You offer 4-A?

Mr. Neumann: Did I ask the witness whether they were correct?

The Master: He told me they were correct.

Mr. Neumann: I offer in evidence 4-A and 4-B.

The Master: Offer 4-A first. Show it to the other side.

(Mr. Neumann hands counsel paper.)

Mr. Goetz: We make the same objection to the admissibility of these two statements of the revenues and expenses of the gas business on August 1, 1904, to December 31, 1919; and furthermore, upon an additional ground that the witness here, in a portion of the statement from 1914 to 1919 attempts to make additions for the various items, in that way passing judgment of his own as to what are revenues and what are expenses of the gas business of this company, and that he is not qualified to pass any such judgment or to give any such opinion before this court upon the things upon which he attempts to express a judgment and opinion.

Mr. Neumann: One minute. I think I can clear that up very quickly.

Q. On the bottom of 4-B, Mr. Cohen, you have set out under the heading "Add for the following items," and then you have set forth certain items, the figures appended thereafter?

A. Yes.

1535 Q. Now, do any of these figures in any way appear in the set of figures that are shown by the totals? Take for instance the last heading, "Operating Income," are any of those figures included in there?

A. I think I can answer your question best in this way:—

Mr. Goetz: I object to the witness attempting to make his own answers. The question has not been asked.

The Master: Objection overruled.

Mr. Goetz: Exception.

A. I have taken the revenues and expenses of the gas business just as I found them on the books, and at the bottom of the statement, also at the center of the statement, the first entry, I noted the items that are to be added to the operating income right above it.

Q. But you have not included them?

By the Master:

Q. In other words, let me ask this: You have here for 1919, "Excess of Revenue over Expenses above?"

A. Yes, sir.

Q. That is a deficit of \$24,000, is that right?

A. That is correct.

Q. Now, in arriving at that deficit certain items that are at the bottom of the page are included?

A. Yes, sir.

Q. And as to 1919, you have set up these items that you state ought to be deducted from the deficiency shown in order to show a true deficiency?

A. That is correct.

Q. Well, that is simply your judgment, or whose judgment is it, Dr. Weber's?

A. Well, both.

1536 Mr. Neumann: They are all based on legal arguments that we will make.

The Master: I shall overrule the objections and I shall take the exhibits as they are prepared, with this statement, that the seven or eight items here following the words, "Add for the following items," and giving those figures are simply figures which, as I understand it, counsel for the Commission will claim should be eliminated in arriving at the deficiency for 1919.

Mr. Neumann: Just to illustrate, take for instance the year 1919, rate case expenditures, \$15,518.73. We contend that that cannot be charged up against the year 1919.

The Master: But according to the books they have.

Mr. Neumann: According to their books they have.

The Master: I understand.

Mr. Neumann: Now, if that amount is chargeable at all we contend that it is chargeable over a number of years, and not for one particular year.

The Master: I understand. I overrule the objection.

Mr. Goetz: I take an exception, and I respectfully point out to the Court that what the Court has ruled is not in agreement with the opinion expressed by the Court, because the Court has accepted a statement from the witness with "Add the following items," with the idea that these items are taken from the books, and are to be added to the operating income.

The Master: No. This Table 4-B has on it matters not strictly in accordance with the witness' statement that this is a tabulation from the books, but I will take the exhibit as it stands, with the statement that these last six items are simply claims by counsel for the Commission, and that the figures are correct figures.

Mr. Neumann: Taken from the books.

The Master: Are correct figures from the books. Now, the exhibit really ends at the line, "Excess of revenue over expenses above," showing a deficiency for 1919, according to the books of \$24,660.66.

Mr. Goetz: The caption instead of reading, "Add the following items," should read, "Claimed by the defendants."

The Master: I think the record sufficiently shows it.

Mr. Goetz: Exception.

The Witness: The last two items on that page, interest on Insurance Participation Certificates and Increase in Insurance Participation Certificates, you can see from the nature of those that those items are not anywhere included above. The first is an income account, and the second is an increase in the balance sheet account. These two are not included anywhere in that statement above there. Furthermore, as the exhibit shows, they are taken from the Public Service Commission reports.

The Master: I think I will be safer by taking them out. You can put it in in some other form later on. I don't think they belong in here.

Mr. Neumann: That simply puts to the trouble of putting in another exhibit. Our position is this, that the exhibit really ends with the figures that come after the words "Operating income;" that the bottom is explanatory of certain legal propositions which we will make later, and it will put us to the inconvenience of offering another exhibit, we will only have to put it in as a separate exhibit.

The Master: I am wondering whether that is not the better way to do it.

Mr. Neumann: There is no harm that can come from it to the complainant. It only puts us to the trouble of putting in other exhibits.

Mr. Goetz: The statement of the witness only tends to show that

they are included and to emphasize our objection.

The Master: I will let it stand.

Mr. Goetz: Exception.

Paper received in evidence and marked Defendants' Exhibit A-11.

Paper received in evidence and marked Defendants' Exhibit A-12.

Mr. Chambers: Mr. Van Steenburgh has asked me to mention the fact that he is absent, and the reason for his absence is that he has a very important engagement himself that he must attend to, and that the District Attorney of Queens County has no assistant or assistants who are available today to appear here.

Mr. Goetz: We should like to have the District Attorney himself appear then.

1539 The Master: I don't care whether he appears or does not appear. The interests of the public are being well protected here.

Mr. Chambers: I do not appear for him in any way.

By Mr. Neumann:

Q. Mr. Cohen, have you likewise prepared a schedule which you have numbered 5?

A. It was prepared under my direction.

Q. What does that schedule purport to show?

A. It shows practically the same—it shows the unit costs for the items in the two schedules previous, from the year 1909 to the year 1919.

By the Master:

Q. With the deductions that you have made or without them or just as the books show?

A. Just as the books show. The items below were not taken into account at all.

Q. In other words Schedule 5 is taken from the books, without adjustment of any kind, or attempted readjustment?

A. The computations are made on the basis of the former two schedules without any deduction being made for those items at all.

Q. Then I am correct that it must necessarily be precisely as the books show the accounts?

A. Yes, sir, with this exception, that the production costs as is shown in the schedule itself, are classified—

Mr. Neumann: One moment.

By Mr. Neumann:

Q. When you say, "The schedule itself" you mean what?

A. Schedule 5.

Mr. Neumann: All right.

1540 A. (continued). The accounts which go to the production account are classified not in accordance with the classification

on the books, but in accordance with the classifications of the Public Service Commission, but the figures for production are the same as on the books.

The Master: Is the result the same, that the company shows a deficiency of 7.33 cents per thousand cubic feet of gas sold?

The Witness: The result is the same.

Mr. Goetz: The same objection as noted to this statement on behalf of the complainants as to the others, with the additional objection that the witness has already indicated that he has attempted to readjust the books of account of the company in particulars not shown, upon bases not shown, and that he is not qualified to make any such adjustment.

The Master: Objection overruled.

Mr. Goetz: Exception.

Paper received in evidence and marked Defendants' Exhibit A-13.

The Master: Is it conceded, Mr. Neumann, that this company did in fact lose 7.33 cents per thousand cubic feet on the operations for 1919?

Mr. Neumann: It is not.

The Master: Then why do you give me a schedule showing that?

Mr. Neumann: We are giving you a schedule showing what the books show.

The Master: In what respect are the books wrong?

Mr. Neumann: That will appear later in a later schedule, or by other data which we have subpoenaed from the company.

1541 Mr. Goetz: These statements are at least binding upon the defendant.

Mr. Neumann: What statements?

Mr. Goetz: That you have offered in evidence.

Mr. Neumann: I know my rights, Mr. Goetz.

By Mr. Neumann:

Q. Likewise, Mr. Cohen, have you prepared a schedule which you have called Schedule 6-A?

A. I have.

Q. And what does that purport to show?

A. That shows the operating expense, detail of the operating expense for the years 1909 to 1913.

The Master: And Schedule 6-B shows it from 1913 to 1919.

The Witness: That is correct.

The Master: Offer them together.

Q. Now, these schedules are correct, are they?

A. They are correct to the best of my knowledge and belief.

Q. They are all taken from the books of the company?

A. Taken from the books of the company.

Q. And the notes are self-explanatory at the bottom of Schedule 6-B?

A. The notes explain entries which are found on the books the best way I could explain them.

Mr. Neumann: I offer these two schedules in evidence.

The Master: Show them to the other side. Those are exactly book figures, are they?

The Witness: Yes, sir.

Mr. Goetz: We make the same objection.

The Master: Objections overruled.

Mr. Goetz: Exception.

1542 Schedule 6-A received in evidence and marked Defendants' Exhibit A-14.

Schedule 6-B received in evidence and marked Defendants' Exhibit A-15.

Q. Likewise, Mr. Cohen, have you prepared Schedule 7?

A. I have.

Q. And what does this schedule purport to show?

A. This schedule shows the company's maintenance and contingency account; that is, it shows the reserves accrued to amortization of capital, renewals and replacements, plant withdrawn from service, and contingency.

Q. And this is all taken from the books of the company, is it?

A. It is taken from the books and records of the company. In this case there are some records outside of the books, such as monthly statistical reports, and others, that we had to go to.

Q. And the notes that you have made here are self-explanatory?

A. The notes explain in the shortest way possible that I could think of what I found on the books.

Q. This statement is correct, is it?

A. I believe it to be correct.

Mr. Neumann: I offer this in evidence.

Mr. Goetz: This statement is objected to upon the grounds previously stated as to the other exhibits, and the additional ground that the statement is in part based upon information derived by the witness from what he calls statistical reports of the company which are not before this court. There is no showing here as to

1543 what information he has taken from those statistical reports; and that those statistical reports are in fact no record of the company by which this company regulates the conduct of its business. They are studies similar to those of which your Honor was advised in the Consolidated Gas case, made for the purposes of analysis and observation by employees of the company, leading to no particular finality in the records of the company.

The Master: Objection overruled.

Mr. Goetz: Exception.

Paper received in evidence and marked Defendants' Exhibit A-16.

Mr. Neumann: I call upon the complainant to produce the Monthly Operating Reports or statistical reports of the New York & Queens Gas Company for the years ending December, 1909, to 1919, both dates inclusive.

(Books produced.)

Mr. Neumann: The complainant does not produce the papers that we have asked them to produce in our notice to produce which is marked Defendants' Exhibit M, for Id.

Mr. Goetz: Which papers?

Mr. Neumann: Monthly Operating Reports or statistical statements.

Mr. Goetz: I have here a number of volumes endorsed, "New York & Queens Gas Company, Monthly Reports," for each of the years.

The Master: Let me ask the witness. Here is a book marked "New York & Queens Gas Company, Monthly Reports 1910." Is that what you mean?

1544 The Witness: I did not take the information that I refer to here from these books. I used those books in checking the information that I got.

The Master: Where did the information come from?

The Witness: They have what they call a Monthly Statistical Report—there is no name on it, so it is hard to tell what to call it. Those apparently are the basis of some of the Journal entries they make. I don't know what you call them, there is no name on them.

Mr. Goetz: I may recall this to your Honor's mind: I suppose these are statements similar to those which we used in the Consolidated Gas case, which were the working papers used in the Accounting Department by some of the Accounting Department employees, and not a part of the permanent records of the company at all.

The Master: These are not the books that you want?

Mr. Neumann: No.

The Master: All right, take them away. Next question.

Mr. Neumann: I want to know whether they intend to produce what we have called for.

Mr. Vilas: They have had all these. They called for them in the notice.

Mr. Neumann: Not these books.

The Master: Counsel for the complainant are directed to bring down the monthly office reports, as I understand they are called.

Mr. Vilas: Look at No. 7 there.

1545 Mr. Neumann: Look at No. 8, I am talking about No. 8, not No. 7. The Monthly Office Reports are under No. 7. Those we have called for under No. 7 of our Notice to Produce.

The Master: When Mr. Cohen gets through here he will go up to Mr. Davison and identify what he wants, and Mr. Davison will bring them down.

Mr. Neumann: I will clear that up in a minute. I offer in evidence letter from Mr. H. C. Davison, dated May 8, 1920, to Mr. Cohen.

The Master: Mr. Davison speaks of them as the Monthly Statistical Statements. Are they here?

Mr. Vilas: That is what we have produced.

Mr. Neumann: No, they are not, and Mr. Davison knows they are not the papers we want.

Mr. Davison: Those are the papers produced from that letter.

The Master: I won't take that letter in evidence.

Mr. Neumann: May I have it marked for Identification?

The Master: Yes.

Letter marked Defendants' Exhibit A-17 for Identification.

Mr. Goetz: Before we proceed, a little while ago a row was raised about the non-production of papers called for by a notice to produce served by Mr. Neumann. I would like to know what papers were called for to which Mr. Neumann referred that have not 1546 been produced and what he wants so that we can go and get them right away.

The Master: Get the papers that Mr. Teele thinks he wants.

Mr. Goetz: They are here.

The Master: Produce them; from 1909 to 1919.

Mr. Neumann: First of all, I want to offer in evidence the office reports or monthly reports underlying the Journal entries for the period August, 1904, to December 31, 1908, both dates inclusive, which the complainant now produces.

The Master: Is that the batch?

Mr. Neumann: Yes.

The Master: They will be received.

Mr. Goetz: We object to them as incompetent, immaterial and irrelevant to any issue before this Court.

The Master: Objection overruled.

Mr. Goetz: They are not records of account of this company.

The Master: Mark them as one exhibit.

Marked Defendants' Exhibit A-18.

Mr. Neumann: I might say for the record that Schedule 8 is not quite ready so in order not to waste any time I will go to the next schedule.

The Master: Go ahead.

By Mr. Neumann:

Q. Mr. Cohen, have you likewise prepared a schedule which you have numbered 9?

A. I have.

Q. And what do you purport to set forth in that statement?

A. That is a summary of the account they call "Profit and 1547 Loss Account" from August 1, 1904, to December 31, 1908, the corporate surplus and deficit accounts from 1909 to 1913, and the General Profit and Loss Account from 1914 to 1919.

By the Master:

Q. Is that the way the complainants kept their books during those periods?

A. You refer to the names of the accounts?

Q. Yes.

A. The names of the accounts changed in those three periods.

By Mr. Neumann:

Q. You have shown the changes on this schedule?

A. I have shown the accounts just as they called them on their books.

Q. This is taken from the books of the complainant company?

A. It is.

By the Master:

Q. And the items are just as they are shown on the books?

A. I have made combinations here to save space; they are very small and relatively unimportant items.

By Mr. Neumann:

Q. The notes on the bottom are self-explanatory, are they?

Mr. Goetz: I object to that; that is the witness's own inference. The Court may not agree.

By the Master:

Q. Are the statements made, statements of the things found in the books, of the items found in the books?

A. If you take up each one?

1548 By Mr. Neumann:

Q. Take up Note A. What do you intend to set forth therein?

A. On Note A I show some items which they show as credits on their books, that I have in the former schedule included as a deduction from a debit, the effect being the same, and in order to have this schedule and Schedule 4-A fit into one another, I have made an explanation to show just what I have done there. The same applies to Note B, Note C, D and E.

Now, Note F shows the name of the account just as it is on the books; that is, the account on their books from 1905 to 1908 reads "Interest on Bonds" instead of "Interest on Funded Debt," and Note G shows the name that they call "Interest on Unfunded Debt" to have been "Interest" from 1905 to 1908.

Mr. Goetz: That is a deduction of the witness.

The Witness: That is a fact just as I found it on the books.

Note H shows what is included in that account in the year 1910 and explains some of the items which are included in other years on that line.

Mr. Neumann: I offer that schedule in evidence.

Mr. Goetz: The same objection is made to this statement as was made to the others, with the further objection which the testimony of the witness disclosed that he has here made adjustments simply to save paper space; that he has made adjustments that do not appear upon the books of account, and that this entire statement represents the financial, or purports to represent the financial condition of the corporation as a corporation and is not limited to the gas business of this company which was involved in the issues before this court. What the corporate profits or losses, or what the outside investments may have been in years gone by particularly are not matters before this Court at issue.

The Master: Objection overruled.

Mr. Goetz: Exception.

Marked Defendants' Exhibit A-19.

Mr. Goetz: How is the Court concerned with the operation of this company outside of the gas business?

The Master: I do not believe I am.

Mr. Goetz: This statement is based purely upon that and nothing else.

The Master: We will find out about it.

By Mr. Neumann:

Q. Likewise, Mr. Cohen, have you prepared a schedule which you call No. 10?

A. I have.

Q. And this is taken from the books of the New York & Queens Gas Company?

A. That is right.

Q. Prepared by you?

A. Correct.

Q. And it is correct?

A. I believe it to be correct.

Q. You have made no deductions or adjustments of any kind?

A. I have made no adjustments on the account; took them just as I found them.

Q. What does this statement purport to show?

A. It shows the operating revenues and operating expenses from the gas business for the first three months of the year 1919, and the first three months of the year 1920, a comparison of the two.

Mr. Neumann: I offer that statement in evidence.

Mr. Goetz: That is objected to upon the grounds already urged to the other statements, and upon the further ground that this is a partial statement which can form no basis for any inference or conclusion by this Court. It relates to the first three months and, as has already been shown, the first three months of this year has involved a very large consumption of gas on account of the weather, and while there may have been a substantial revenue for that reason, the opera-

ting expenses at the high rates in effect for these three months will continue for the portions of the year when the gas consumption will be upon an entirely different basis. It is absolutely inconclusive and an unreliable statement for any finding or opinion by this court.

The Master: I will receive it.

Mr. Goetz: Exception.

Marked Defendants' Exhibit A-20.

Q. Likewise, Mr. Cohen, have you prepared a schedule which you have numbered 11?

A. I have.

Q. And where was that taken from?

A. This was taken from various sources. The first part of it, an analysis of the account "Franchises, Good Will, &c.," is a compilation from the former schedules in order to show at a glance the accounts "Franchise, Good Will, &c.," from the year 1900 down to the year 1919.

The second part of it, the entries of "Newtown & Flushing Gas Company, Journal 1, page 45," is a copy of that entry from 1901 the Journal as I have mentioned here.

The third part of it, the account, "Franchises, Good Will, &c." from 1904 to 1919, shows the changes in that account—that is, this shows in detail the composition of the \$1,073,036.37 in the first part.

Note A is a copy of the journal entry from folio 397 of Journal No. 2 of the New York & Queens Gas Company at the bottom of which I made a notation, "No charge of \$4,676 appears in the account, Franchises, Good Will, &c., for the cost of the purifying boxes purchased in 1905.

Q. This statement is correct, is it?

A. I believe it to be correct.

Q. And taken from the books of the company, as you just testified?

A. Taken from the sources as just testified to.

Mr. Neumann: I offer that statement in evidence.

Mr. Goetz: This is objected to upon the grounds previously urged the other statements.

There is a particular vice in this statement here that I desire to call to the attention of the Court. It purports to be a statement of intangible values, whereas the witness knows, as was shown by my brief examination by the Court itself this morning, that included in this account "Franchises, Good Will, &c.," were various items of tangible property, the item of one hundred and eighty-one thousand and some odd making up one of the entries in that account which the Court itself saw this morning in going over the journal entry, and this witness has made no attempt, and if he did make an attempt he would not be qualified to produce the results, to show what is included in tangible property, what is included as intangible property in this account of franchises, Good Will, &c."

Mr. Neumann: The witness does not attempt to do anything more than to set up what you have got in your books.

Mr. Goetz: He is not doing anything of the kind.

The Master: What item are you referring to?

Mr. Nathan: He is referring to the open journal entry, "Newtown & Flushing Gas Company, College Point Merger, \$183,251.67." That is the opening entry in the journal of the Newtown & Flushing Gas Company.

The Master: Is that the item you are complaining about?

Mr. Goetz: That is one of the items.

The Master: That does not contain anything except franchises, good will, etc., that \$183,000.

Mr. Goetz: The Court will see that this item of \$183,251.67 referred to on page 45 of the journal gives details.

The Master: No, it does not do anything of the sort. That is a separate item.

Mr. Goetz: The \$183,000.

The Master: Is not a total of those.

Mr. Goetz: I am incorrect about the particular figures, \$183,254.67.

The Master: There is an item set opposite "Franchises, Good Will, &c." Objection overruled.

1553 Mr. Goetz: Exception.

Marked Defendants' Exhibit A-21.

Mr. Goetz: I was in error about the particular item of \$183,254.67, but the principle which I urged upon the Court as being involved that there are a number of structural items that are included in these accounts and which our examination very clearly demonstrates, is correct, and I still urge it upon the Court.

The Master: I will allow you to bring it out on cross-examination.

By Mr. Neumann:

Q. Likewise, Mr. Cohen, have you prepared the Schedule No. 12?

A. I have.

Q. And what do you purport to show in Schedule No. 12?

A. This shows a comparison between the balance sheets as of August 1, 1904, of the New York & Queens Gas Company and its predecessor, the Newtown & Flushing Gas Company, and July 31, 1904, showing the increase and decrease of accounts, and at the bottom of the page an analysis to summarize those increases and decreases.

Q. And this statement is prepared from the sources of which you just testified?

A. The statement is prepared from the New York & Queens Gas Company Ledger and from the journal and so on, and the Newtown & Flushing Gas Company's ledger and journal.

Q. And it is correct, is it not?

A. I believe it to be correct.

Mr. Neumann: I offer that schedule in evidence.

1554 Mr. Goetz: The same objection is now made to this statement, and I would like the Court's permission to urge as an objection to the previous exhibit and also to this one, the contention made by the complainant that the cost to the Newtown & Flushing Gas Company of the tangible or intangible items of property is not cost to this complainant, and is not relevant or material or competent to the issues in this case.

The Master: Objection overruled.

Mr. Goetz: Exception.

Marked Defendants' Exhibit A-22.

Mr. Neumann: If the Court please, I have four more tables to submit in evidence, Tables No. 8, 13, 14 and 15, which are not quite ready for the reason that our accountants were unable to get the vouchers in order to check them up in time, and we could not submit them until we were satisfied that they had been properly checked and were complete and correct. And I will say that if the complainant so wishes, I will wait until these tables are ready and then produce the witness again, or they may proceed and cross-examine him now on the tables as already submitted.

Mr. Goetz: With respect to the tables which were put in evidence this morning, the first inking the complainant got of their contents was after each table was introduced in evidence. They are all based upon books and records which the witness claims were correctly transcribed, and which we from previous experience have reason to believe were not correctly transcribed, and the least that we may expect under such circumstances is an opportunity to check up those exhibits with the books so that we may proceed with the cross-examination and point out to the Court the errors or fallacies in these statements. We do not feel that for any other reason should there be a postponement of the taking of the testimony of this witness.

The Master: The cross-examination is suspended to give the complainant an opportunity to look at these exhibits. Let me know when you are ready to cross-examine the witness.

MAYNARD H. SPEAR, recalled in behalf of the defendants, testifies as follows:

Direct examination.

By Mr. Neumann:

Q. Mr. Spear, I now show you Public Service Commission report of the New York & Queens Gas Company for the year 1909 and direct your particular attention to page 30. Have you looked at it, Mr. Spear?

A. Yes.

Q. You recognize that as a report filed by your company to the Public Service Commission?

A. Yes.

Q. And directing your attention to page 30, what is the amount of the par value of actual issued bonds?

A. A total of \$810,000.

Q. I said bonds?

A. \$750,000.

Q. Now, then, I call your attention to the report of your company to the Public Service Commission for the year 1910. By the way, calling your attention again to the one of 1909, does your signature appear on the last page of that report?

A. Yes; in the form of an affidavit as manager of the company.

Q. And the other signature there is whose?

A. H. L. Snyder.

Q. Who is he?

A. He was treasurer of the company at that time.

Q. Is he still with your company?

A. He is not.

Q. Do you recognize that as his signature?

A. Yes.

Mr. Neumann: I offer in evidence page 30 of the Public Service Commission Report of the New York & Queens Gas Company for the year 1909.

Mr. Goetz: That is objected to on the ground that the information upon that sheet is not relevant to the issues in this case.

The Master: Objection overruled; that will be considered in evidence as Defendants' Exhibit A-23.

Considered as Defendant's Exhibit A-23.

Q. I now call your attention to the report of your company to the Public Service Commission of the First District for the year 1910. Do you recognize that as a report made by your company to the Commission?

A. Yes.

Q. I direct your attention to the last page, to the signature there of Mr. H. L. Snyder?

A. Yes.

Q. Do you recognize that?

A. I do.

Q. You prepared part of this report, did you, Mr. Spear?

A. Yes.

Q. I direct your attention to page 30. What is the amount there of bonds?

A. \$816,000.

Mr. Neumann: I offer in evidence page 30 of the report of this company to the Public Service Commission for the year 1910.

Mr. Goetz: That is objected to upon the grounds stated.

The Master: Objection overruled; that will be considered as Defendants' Exhibit A-24.

Considered as marked Defendants' Exhibit A-24.

Q. You were with the company at that time, were you not?

A. Yes.

Q. You were in their employ?

A. Yes.

Q. In the year 1909, what was your position?

A. Manager.

Q. In the year 1910 what was your position?

A. I think it was manager.

Q. Now, having looked at those reports, will you say whether or not your company issued any bonds between the year 1909 and the year 1910?

A. No, I do not think they did.

Q. Then these reports to the Commission are incorrect?

A. No. My recollection is that we had some notes with the Lincoln Trust Company and some bonds up as collateral and which had previously been authorized by them.

Q. Previously been authorized by whom?

A. The trustees, the Lincoln Trust Company.

1558 Q. When?

A. I do not know what year they authorized it.

Q. Do you know of your own knowledge, Mr. Spear, and I am going to ask a direct question, whether or not your company ever received any authorization from the Public Service Commission of the First District of the State of New York during the year 1909 or 1910 to issue \$66,000 worth of bonds?

Mr. Goetz: That is objected to upon the ground that it is incompetent, immaterial and irrelevant.

Mr. Neumann: You pleaded your securities were duly issued.

Mr. Goetz: Yes. This witness cannot pass upon the legal question involved, and Mr. Neumann himself knows that the point of difference is as to whether bonds issued before 1907, before the Public Service Commission was created, required any formal act of the Commission, where they were formally delivered after the Commission was created.

The Master: Objection overruled. I will let the witness state whether there was any order made in 1909 or 1910.

The Witness: I do not know.

Q. Who of your company would know; would Mr. Carter, who is now present in court, know?

A. No, he was not connected with the company at that time.

Q. Who would know?

Mr. Goetz: The Public Service Commission itself would know. He will concede any fact that the record of the Commission shows.

Mr. Neumann: Will you concede that these bonds were issued without an order of the Public Service Commission in either the year 1909 or 1910?

Mr. Goetz: I will concede that the Commission made no order in 1909 and 1910 directing or authorizing the issuance of bonds this company. That is all I concede.

Mr. Neumann: That is not enough.

Cross-examination.

By Mr. Vilas

Q. I call your attention to page 30 of the report for 1909, which has been offered in evidence, particularly the item "Demand Notes \$60,000." Do you know to whom those notes had been issued?

Mr. Neumann: I object to that on the ground that it is incompetent, immaterial and irrelevant. The witness has evidently testified that he knows nothing about this bond issue.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. Those were notes——

Mr. Neumann: Notes have nothing to do with bonds. What I questioned him about was on the bond issue, and that is all his direct testimony went to.

The Master: Objection overruled.

Mr. Neumann: Exception.

The Master: You have offered in evidence that page.

Mr. Neumann: That is right.

The Master: And that appears on that page.

Mr. Neumann: That is right.

A. (Continued:) Those notes were given to the Lincoln Trust Company for money borrowed.

1560 Q. What was the total bond issue of the authorized issue of the New York and Queens Gas Company?

Mr. Neumann: That is objected to on the ground that it is incompetent, immaterial and irrelevant. The witness has already testified he does not know anything about this bond issue of \$66,000.

The Master: Authorized by the company?

Mr. Vilas: Yes.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. \$810,000, it says here.

Mr. Neumann: No; I call the Master's attention to the fact that the entry reads "\$750,000 bonds, note \$60,000," and not \$810,000.

The Master: That makes a total of \$810,000.

Mr. Neumann: Let the Master look at it.

The Master: The question is, what on that page is indicated as the authorized issue of bonds?

The Witness: \$1,000,000.

Q. And when was that issue authorized by the company?

Mr. Neumann: I object to that on the ground that it is incompetent, immaterial and irrelevant.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. 1904.

Q. August 1, 1904?

A. Yes.

Q. And what was done with the bonds under that issue, issued under that authority?

1561 A. Held by the trustees, the Lincoln Trust Company.

Q. Do you know whether any bonds were withdrawn from the Lincoln Trust Company under the mortgage between 1909 and 1910?

Mr. Neumann: I object to that on the ground that it is incompetent, immaterial and irrelevant. The witness has already shown that he has no knowledge of those bonds.

The Master: Objection overruled.

Mr. Nathan: Exception.

A. Yes. At various times reports were made to the Lincoln Trust Company as to expenditures for construction work. They would issue bonds for it.

Mr. Neumann: I move to strike the witness' answer out upon the ground that it is not responsive to the question.

The Master: Motion denied.

Mr. Neumann: Exception.

Q. And you then withdrew the bonds from the Trust Company?

A. Yes.

Q. What would you do with them?

Mr. Neumann: Same objection.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. Sell them.

Q. Was that done in the year between 1909 and 1910 when these two reports were made?

Mr. Neumann: Same objection.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. Yes.

Q. Do you know for what the bonds withdrawn in that year were used?

1562 Mr. Neumann: Same objection.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. To pay the demand notes of the Lincoln Trust Company.

Q. The proceeds of those bonds were used for that purpose?

A. Yes.

Q. Were they used for any other purpose?

A. The notes were for construction work we had done.

Q. So that ultimately the proceeds of those bonds went into construction?

A. Yes.

Q. How many bonds were originally deposited with the Lincoln Trust Company under this mortgage—in what amount?

Mr. Neumann: Same objection.

A. \$1,000,000.

Q. The entire issue?

A. Yes.

Q. That was when?

A. August 1st, 1904.

The Master: Is that all, Mr. Vilas?

Mr. Neumann: Are you through, Mr. Vilas?

Mr. Vilas: Yes.

Redirect examination.

By Mr. Neumann:

Q. Are you familiar with Section 69 of the Public Service Commission Act, Mr. Spear?

A. No.

Mr. Neumann: I offer in evidence Section 69 of the Public Service Commission Act, as contained in the Consolidated Laws of the State of New York, Volume 6, Section 2.

1563 The Master: It will be considered in evidence.

Mr. Goetz: Before that is marked, may we ask that the Court consider the entire act in evidence, rather than part of it.

The Master: If the Master finds it necessary to look at the act, he will look at all of it.

Mr. Goetz: It is a general law and does not need to be proved at all.

The Master: Why, of course not. But I am taking it.

Mr. Neumann: There is this question about it, it being a state law and the case being in the United States Court, there may be some objection.

Mr. Vilas: You raised the very objection to these general laws.

Mr. Neumann: Now we are offering general laws and you are objecting. You are consistent and so are we.

The Master: It is received as A-25.

Considered as marked Defendants' Exhibit A-25.

Mr. Neumann: I am through.

Recross-examination.

By Mr. Goetz:

Q. Since 1909 has the New York & Queens Gas Company been served with any notice, by the Public Service Commission for the

First District, of any action or proceeding to require the approval of the Commission for the issuance of the bonds referred to by Mr. Neumann?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial; the witness has already testified that 1564 he had no knowledge on that subject at all.

The Master: Overruled.

Mr. Neumann: Exception.

A. No, it has not.

Mr. Goetz: We offer in evidence the balance of the Public Service Commissions Law of the State of New York.

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial.

The Master: The balance is received and will be given the same exhibit number.

Mr. Goetz: Shall we let those books go up again—that you had here for Mr. Cohen?

Mr. Neumann: I will tell you better after recess. So far as I am concerned, Mr. Tobin wants to go on now.

The Master: Yes, he must go right on.

Mr. Tobin: We offer in evidence the provisions of the Greater New York Charter, more particularly Chapter 17, which is entitled "Taxes and Assessments."

Mr. Vilas: That is objected to as irrelevant and immaterial.

The Master: If he asks me to take notice of it, I will take notice of it.

Mr. Vilas: I thought he offered it in evidence.

Mr. Tobin: I will offer it in evidence.

Mr. Vilas: Objected to as improper, a general law.

The Master: I will take it as A-26.

Considered marked Defendants' Exhibit A-26.

Mr. Vilas: What part of it did you offer?

1565 The Master: Chapter 17 of the Greater New York Charter relating to taxes and assessments.

Counsel in this case from now on must not assume that time is going to be occupied. They must have the witnesses here. My time is getting too valuable and too short, I cannot afford to do it. Every minute counts with me now.

Mr. Tobin: We will proceed to offer in evidence the record of assessed valuation of real estate owned by the New York & Queens Gas Company, Blocks Nos. 170 and 171, Lots Nos. 30, 31 and 47, as appears under the certificate of C. Rockland Tyng, Secretary of the Department of Taxes and Assessments.

Mr. Vilas: What was there said about that?

The Master: The Judge said he was going to think it over.

Mr. Vilas: I was not certain whether he reached a final conclusion, and he left me no instructions about it.

The Master: I do not think he did. He had in mind that he

might want to cross-examine some of these deputy tax commissioners, and I think he also had in mind the proposition of saving time. I do not think he decided what he wanted to do about it.

Mr. Vilas: Is this offered in evidence? We object to that. In the first place it is not competent proof, there is no opportunity to cross-examine the witnesses; in the second place, it contains the assessments on improvements, which is utterly incompetent.

Mr. Neumann: No.

Mr. Vilas: It does; it contains the totals.

1566 The Master: I will not be able to take it unless they consent. Objection sustained.

Mr. Neumann: I thought the complainant wanted to save time in this case.

Mr. Vilas: We would not save time by admitting incompetent evidence.

Mr. Neumann: The situation here is this with reference to these records, that these are public records, certified copies of public records. Why are they not admissible in evidence as a public record, if for no other reason?

The Master: I do not believe that proof of assessed value is competent.

Mr. Cummings: Are those admitted in evidence?

Mr. Vilas: No.

Mr. Cummings: What is the reason you gave, your Honor?

The Master: The main reason is that I do not believe that this is the way to prove assessed values, in the first place. In the second place, I do not think proof of assessed values is competent in this case.

Mr. Cummings: That goes to the weight of the evidence.

Mr. Chambers: It is some evidence.

Mr. Tobin: Yes, it is some evidence.

The Master: When Judge Ransom undertook in the Consolidated case to prove by oral testimony of witnesses what in their judgment was the value of the property which they placed on it for assessment purposes, I looked into the question considerably and I reached the conclusion that the complainant in that case was entitled to prove

1567 by a witness held out by the public to be competent for that purpose, and who had taken a civil service examination, and so on and so forth—

Mr. Cummings: You swore them as real estate experts—not as public records. We are offering them here as public records, an entirely different theory.

The Master: I am coming to that. I reached the conclusion that as real estate experts they could testify.

Mr. Cummings: Certainly.

The Master: But my judgment at that time was that the mere fact that the assessment was laid as a real estate assessment, as you stated, was not competent proof.

Mr. Cummings: You take the position, then, that a certified copy of a public record is not entitled to be received in evidence?

The Master: No, I do not say anything about the certified copy

Mr. Cummings: We have produced it here.

The Master: I say the record itself, the original record, would not be competent proof.

Mr. Cummings: The public record would not be?

The Master: No.

Mr. Cummings: An original public record would not be competent?

The Master: No.

Mr. Cummings: You have no objection to the certified copy?

The Master: No, I am not raising the point of the certified copy.

Mr. Neumann: No, I understand that was not the point the complainant was raising, that it is a certified copy. But here is something that should be considered in connection with this matter, and that is in connection with these amounts of assessments of this company. This company from time to time has made reports to the State Tax Board, which is a different taxing official, wherein it has set forth the figures that were assessed against it. So that, taking the certified copy of the record, plus their admission against interest, as to what amount was assessed against it, you have a complete check.

Mr. Vilas: That statement is not correct.

Mr. Chambers: Any public record is admissible anyway.

Mr. Neumann: So there you would have it from two sources, from the record itself and from the admissions of the company made in their tax reports.

The Master: If you are arguing thus to keep me going until one o'clock, you need not waste any more time with it.

Mr. Neumann: No, I am not.

The Master: Because I can go out and talk some business for a few minutes, if that is what you are driving at. But there is no sense in keeping up the discussion.

Mr. Cummings: You rule it out and we except. A public record is always admissible in evidence.

Mr. Neumann: We will have it marked for identification.

Mr. Cummings: I am talking about courts generally.

The Master: Mr. Cummings, I will say this, that it has always been my theory that a public record or the act of a public official made in due course of duty is competent evidence. That was my impression when I looked into this question in the Consolidated case, and I, rather against my own judgment of the situation, reached the conclusion that there was an exception in this kind of a situation. If counsel for the complainant press their objection I will sustain it, because I think that is what the cases hold, though personally I should have preferred to have reached a different conclusion. I have always felt the rule to be that a public record showing the result of a public officer's work done in accordance with law, or any other act done in accordance with law, is a proper piece of evidence; but somehow or other I had not reached that conclusion.

Mr. Cummings: Exception. I have not any doubt about it, not

The Master: I have reached the conclusion that this kind of evidence is not receivable in this case.

Mr. Cummings: This is the valuation they have found. We can call these men, have them swear it is that valuation. How much stronger would that be?

Mr. Chambers: I was going to ask if we called these Deputy Tax Commissioners one by one, will you take their testimony?

The Master: Yes, then I will take it by qualifying them as real estate experts, just as Judge Ransom did.

Mr. Goetz: I hope your Honor is not making rulings in advance, before we have a chance to object to the testimony.

The Master: What, the real estate experts?

Mr. Goetz: Oh, if they qualify as experts.

The Master: These Deputy Commissioners?

Mr. Goetz: If they qualify, all right.

1570 The Master: Who are in the same class as the men you produced?

Mr. Goetz: Why, here they are for the assessment on the improvements.

The Master: I am not saying anything about that. I am talking about the qualification of the man to testify.

Mr. Cummings: If he qualifies like anybody else qualifies, then his testimony is admissible.

Mr. Neumann: If what Mr. Goetz says is so, this statement contains the land separate from the personalty.

Mr. Chambers: We are entitled to show there are gas holders on the land, and so forth.

Mr. Goetz: Certainly.

Mr. Chambers: They are competent as to that.

Mr. Neumann: They are certainly competent as to the land, because that is all they are called to testify to.

Mr. Chambers: No, they are competent as to the buildings, stables, and so forth.

Mr. Cummings: It is competent because it is a public record, that is the reason it is competent; and it has always been competent.

Mr. Neumann: Their oath of office shows what they have to do, and it is all contained in a statement offered in evidence.

The Master: I cannot argue it in detail with you, Mr. Cummings. All I can say about it is this—and it is what I have said before: I have always believed the rule to be as you have advanced it, and yet I reached the conclusion in the Consolidated case that that was

not the rule in the case of tax or assessment records, where
1571 the value of property was concerned.

Mr. Cummings: Did you reach that conclusion after looking up the case?

The Master: Yes.

Mr. Cummings: What case?

The Master: Why, in the brief that they submitted to me and what the other counsel did. Their argument was that the Deputy Tax Commissioner could testify. I approached it from the standpoint that I did not see the necessity of having a Deputy Tax Com-

missioner, that I thought the assessed records themselves could be introduced. Counsel for the State at the time indicated that they would not consent to that, and I was looking to see why they would not consent to it. I rather reached the conclusion that counsel for the State was right, that they could not use the assessment records that way. It has passed from my mind, the precise reason for—

Mr. Chambers: Let me set you right on that. I have argued hundreds of cases, I might say, for the State, in which the question involved was the value of property taken for Barge Canal purposes. I remember three cases—maybe you were in the court room when I argued them at Saratoga—involving three farmers out near Pendleton or some other place, in Orleans County or some other county way out in the western part of the State. They, of course, had the best part of their farms taken for Barge Canal purposes, where they had fruit trees and all that, and on the part not taken they were not worth a continental. The question up was what was the value of pieces taken, and it appeared in that case that the State put in evidence the assessed valuation of those pieces of property, and the assessed valuation, as I remember it, in one piece, was about \$1,200., and this honest farmer was claiming \$18,000.

The Master: He was modest.

Mr. Chambers: That \$1,200. was on the whole property. He was claiming \$18,000, and all the farmers stood with him. So I argued in the Appellate Division the question as to the admissibility of the assessment rolls, and the Judges up there—

The Master: In the Third Department?

Mr. Chambers: In the Third Department, argued it back and forth, and the question came up firmly, when they sustained the respondent.

The Master: You mean yourself?

Mr. Chambers: Yes.

The Master: The trouble with that authority is this, that that very court at that very time affirmed a decision I had gotten and the Court of Appeals reversed them.

Mr. Chambers: Since then in all those barge canal cases the Court has held uniformly that assessed values as shown by the judgment roll is some evidence of the value of property.

Mr. Goetz: Your Honor will recall that one of the points we urged in the Consolidated Gas case in support of our offer of the evidence given by the Deputy Tax Commissioners, who were qualified, was that the acts of those officers were admissions against interest and, while we could avail ourselves of them, it would not lie in the mouths of those who made the admissions to urge them in their own interests.

The Master: I remember the situation pretty well, and I was clear of the particular reasons underlying my conclusion, though not at present in my mind. But generally speaking it seemed to be the rule that the record of assessed values was not record of value where the question of value was at issue in a separate action.

Mr. Neumann: It is some evidence.

Mr. Cummings: It is some evidence of value.

Mr. Neumann: And especially so when it is backed up by the statements of this complainant company in their reports to other taxing authorities, as to the amount they have been taxed with in this particular jurisdiction and for that particular property.

Recess.

Afternoon Session.

Mr. Neumann: I offer in evidence from book produced by the complainant, marked "Monthly Report for the Year 1919 of the New York & Queens Gas Company," the page marked "Comparative Balance Sheet," for the year 1917, as compared with the year 1918.

The Master: Is there any objection to that offer?

Mr. Goetz: There is. The method of keeping this statement has not been shown. To describe it as a report is a misnomer. It has already been shown in connection with other testimony, not in this case, that these so-called reports are nothing but statistical studies made by employees of the company; that they are not a report, nor representation as to any final result with regard to the operations of the company upon which anybody may rely except for purposes of information; that they contain no evidence of the operation or the finances of the company.

The Master: Objection overruled.

Mr. Goetz: Exception.

Paper received in evidence and marked Defendants' Exhibit A-27.

Mr. Neumann: I offer in evidence from the same volume the page, headed, "New York & Queens Gas Company, Investment in Land, Plant and Equipment for the twelve months of 1919."

Mr. Goetz: I make the same objection.

The Master: Objection overruled.

Mr. Goetz: Exception.

Paper received in evidence and marked Defendants' Exhibit A-28.

Mr. Neumann: I now offer in evidence from the same volume the page headed as follows: "New York & Queens Gas Company, Station Cost of Material and Labor in gas made, exclusive of General Expense, Taxes, Insurance, Renewals, etc., for the twelve months ending December, 1919"; and underneath that in large letters and brackets the words, "Water Gas."

Mr. Goetz: I make the same objection.

The Master: Objection overruled.

Mr. Goetz: Exception.

Paper received in evidence and marked Defendants' Exhibit A-29.

The Master: What is the purpose of offering, for instance, Defendants' Exhibit A-29, Station Cost of Material and Labor.

1575 What do you want to do, prove up Mr. Teele's exhibits?

Mr. Neumann: No, I don't, but we are putting in the whole series of them for the different years and then we will draw up a table for you to show the difference between 1919 and other years.

The Master: How will that disprove 1919?

Mr. Neumann: It will prove 1919 as being an unusual year.

The Master: In the cost of making things?

Mr. Neumann: Yes, and everything.

The Master: That is admitted, I think, isn't it?

Mr. Neumann: No, it is not.

The Master: That it is higher than ever before?

Mr. Neumann: You see, for instance, certain items that run along uniformly at \$3,300, and all of a sudden in 1919 they jump up to \$12,000, and items of that kind.

The Master: Go ahead. It looks to me as if you were proving up Teele's exhibit. It is the same precisely as on this statistical sheet.

Mr. Neumann: Now I offer in evidence from the book produced by the complainant entitled, "New York & Queens Gas Company, monthly report for the year 1918, the page entitled "New York & Queens Gas Company, Comparative Balance Sheet, assets, comparing the year December, 1918, with 1917."

Mr. Goetz: I make the same objection. I wish to emphasize to the Court the objection already made, and that is the method of proof by documents which are not the books of record of the company, but by documents which are not identified here, and for whose correctness we do not vouch.

1576 Mr. Neumann: Do you mean to say, Mr. Goetz, that you have not produced this book?

Mr. Goetz: We have produced that book, and it is a statistical study made by employees of the company, and for no purposes of record.

Mr. Neumann: And your company keeps them year after year, and you have them bound up, and they are marked here, "New York & Queens Gas Company, Monthly Reports for the year 1918," or whatever year they apply to?

The Master: Don't answer that.

Mr. Goetz: They make no representation of their correctness.

The Master: Objection overruled. Mark that as an exhibit.

Paper received in evidence and marked Defendants' Exhibit A-30.

Mr. Neumann: I now offer in evidence from the same volume the page entitled "New York & Queens Gas Company, investment in land, plant and equipment, twelve months, for the year 1918."

Mr. Goetz: I make the same objection.

The Master: Objection overruled.

Mr. Goetz: Exception.

Paper received in evidence and marked Defendants' Exhibit A-31.

Mr. Neumann: I now offer in evidence from the same volume the page marked "New York & Queens Gas Company, station cost of material and labor in gas made, excluding general expenses, taxes, insurance, renewals, etc., for the twelve months ending December, 1918."

Mr. Goetz: I make the same objection.

The Master: Objection overruled.

1577 Mr. Goetz: Exception.

Paper received in evidence and marked Defendants' Exhibit A-32.

Mr. Goetz: I want to save the time of the Court in making objections to the admissibility of the books for the prior years which Mr. Neumann is about to offer, but I would like to direct the Court's attention to the further objection that the earlier years are not matters which are properly in issue in this case, and that the admission of these books would only compel the complainant to offer further proof with regard to those other years, and so perhaps unduly lengthen the trial of this case.

Mr. Neumann: Are you getting an alibi ready?

The Master: Objection overruled.

Mr. Goetz: Exception.

Mr. Neumann: I now offer in evidence from the book produced by the complainant marked, "New York & Queens Gas Company, Monthly Report for the year 1917," and particularly the page marked, "New York & Queens Gas Company, Comparative Balance Sheet," comparing the years 1916 and 1917.

Mr. Goetz: I make the same objection.

The Master: Objection overruled.

Mr. Goetz: Exception.

Paper received in evidence and marked Defendants' Exhibit A-33.

Mr. Neumann: I offer in evidence from the same book the page entitled, "New York & Queens Gas Company, Investment in Land Plant and Equipment, twelve months of the year 1917."

Mr. Goetz: I make the same objection.

1578 The Master: Objection overruled.

Mr. Goetz: Exception.

Paper received in evidence and marked Defendants' Exhibit A-34.

Mr. Neumann: I offer in evidence from the book produced by the complainant marked "New York & Queens Gas Company, Monthly Reports for the year 1916," the page containing the heading, "Comparative Condensed Balance Sheet," comparing the years 1916 and 1915.

Mr. Goetz: I make the same objection.

The Master: Objection overruled.

Mr. Goetz: Exception.

Paper received in evidence and marked Defendants' Exhibit A-35.

Mr. Neumann: I now offer in evidence from the same volume the page marked, "Invested in Plant and Property for the Twelve Months Ending December 31, 1916."

Mr. Goetz: I make the same objection.

The Master: Objection overruled.

Mr. Goetz: Exception.

Paper received in evidence and marked Defendants' Exhibit A-36.

Mr. Neumann: I now offer in evidence from the same volume the page marked, "Cost of Labor and Material in Gas Made for the Twelve Months Ending December, 1916."

Mr. Goetz: I make the same objection.

The Master: Overruled.

Mr. Goetz: Exception.

Paper received in evidence and marked Defendants' Exhibit A-37.

Mr. Neumann: I now offer in evidence from the book produced by the Complainant company entitled, "New York & Queens Gas Company Monthly Report for the Year 1915," the page 1579 thereof headed, "Comparative Condensed Balance Sheet."

Mr. Goetz: I make the same objection.

The Master: Objection overruled.

Mr. Goetz: Exception.

Paper received in evidence and marked Defendants' Exhibit A-38.

Mr. Neumann: I now offer in evidence from the same volume the page marked, "Invested in Plant and Property for the Twelve Months Ending December 31, 1915."

Mr. Goetz: I make the same objection.

The Master: Objection overruled.

Mr. Goetz: Exception.

Paper received in evidence and marked Defendants' Exhibit A-39.

Mr. Neumann: I now offer in evidence from the same volume the page marked, "New York & Queens Gas Company for Twelve Months of 1915, Cost of Material and Labor in Gas Made."

Mr. Goetz: I make the same objection.

The Master: Objection overruled.

Mr. Goetz: Exception.

Paper received in evidence and marked Defendants' Exhibit A-40.

Mr. Neumann: I now offer in evidence from the book produced by the Complainant marked, "New York & Queens Gas Company, Monthly Report for the year 1914," the page thereof headed, "Comparative Condensed Balance Sheet."

Mr. Goetz: I make the same objection.

The Master: Objection overruled.

Mr. Goetz: Exception.

Paper received in evidence and marked Defendants' Exhibit A-41.

1580 Mr. Neumann: I offer in evidence from the same volume the page headed, "Invested in Plant and Property, Twelve months Ending December, 1914."

Mr. Goetz: I make the same objection.

The Master: Objection overruled.

Mr. Goetz: Exception.

Paper received in evidence and marked Defendants' Exhibit A-42.

Mr. Neumann: I now offer in evidence from the same volume the page headed, "Cost of Material and Labor in Gas Made for Twelve Months, 1914."

Mr. Goetz: I make the same objection.

The Master: Objection overruled.

Mr. Goetz: Exception.

Paper received in evidence and marked Defendants' Exhibit A-43.

Mr. Neumann: From the book produced by the complainant company marked, "New York & Queens Gas Company, General Report, Years 1912 and 1913," I offer that part thereof which is contained between the blue folder, and is marked on the outside, "General Report, New York & Queens Gas Company, Twelve Months 1912," and, on the second page thereof there are three typewritten pages inserted.

Mr. Goetz: I make the same objection.

The Master: Objection overruled.

Mr. Goetz: Exception.

Paper received in evidence and marked Defendants' Exhibit A-44.

Mr. Neumann: I offer in evidence from the same volume three pages contained in the blue folder, marked at the beginning "General Report, New York & Queens Gas Company, Month of 1581 December and Twelve Months of 1913."

Mr. Goetz: I make the same objection.

The Master: Objection overruled.

Mr. Goetz: Exception.

Paper received in evidence and marked Defendants' Exhibit A-45.

Mr. Goetz: I would like to call the Court's attention to the fact that on a number of these sheets I have observed pencil marks, red ink changes and other changes. These documents will have to be taken with all the imperfections in them. There is also a column which is not entitled at all, evidently sales per thousand, but it has no title at all.

Mr. Neumann: I move to strike out from the record the statement of counsel, because it evidently is not based on anything he knows, and as he now states, it is based on the claim that it has no heading.

The Master: I will pay as much attention to his statement as I will to your motion.

Mr. Neumann: Then I will make no further motion.

I offer in evidence from the book produced by the complainant company marked, "New York & Queens Gas Company, Monthly Reports, July, 1912, to December, 1913," the page headed, "Comparative Balance Sheet."

Mr. Goetz: I make the same objection.

The Master: Objection overruled.

Mr. Goetz: Exception.

Paper received in evidence and marked Defendants' Exhibit A-46.

Mr. Neumann: I offer in evidence from the same volume the page marked, "Invested in Plant and Property, Twelve Months Ended December, 1913."

1582 Mr. Goetz: I make the same objection.

The Master: Objection overruled.

Mr. Goetz: Exception.

Paper received in evidence and marked Defendants' Exhibit A-47.

Mr. Neumann: I offer in evidence from the same volume the page entitled, "New York & Queens Gas Company for the Twelve Months, December, 1913, Cost of Material and Labor in Gas Made."

Mr. Goetz: I make the same objection.

The Master: Objection overruled.

Mr. Goetz: Exception.

Paper received in evidence and marked Defendants' Exhibit A-48.

Mr. Neumann: I now offer in evidence from the book produced by the complainant and marked "The New York & Queens Gas Company Monthly Reports for the year 1911" that portion thereof contained in a blue folder including two typewritten pages and which blue folder is marked at the beginning "General Report, New York & Queens Gas Company, for the 12 months 1911."

Mr. Goetz: I make the same objection.

The Master: Objection overruled.

Mr. Goetz: Exception.

Marked Defendants' Exhibit A-49.

Mr. Neumann: I now offer in evidence from the book produced by the complainant marked "New York & Queens Gas Company Monthly Reports for the year 1910," that portion thereof contained in the blue cover and having one typewritten page insert marked on the outside of the blue cover "General Report, New York & Queens Gas Company for the 12 months 1910."

1583 Mr. Goetz: I make the same objection.

The Master: Objection overruled.

Mr. Goetz: Exception.

Marked Defendants' Exhibit A-50.

Mr. Neumann: I now offer in evidence from the book produced by the complainant and marked "New York & Queens Gas Company Monthly Report for the year 1909," that portion thereof contained in

a blue folder without any typewritten inserts and marked on the outside thereof, "General Report, New York & Queens Gas Company for 12 months 1909."

Mr. Goetz: I make the same objection.

The Master: Objection overruled.

Mr. Goetz: Exception.

Marked Defendant Exhibit A-51.

Mr. Neumann: How about copying these?

Mr. Goetz: We have got scores of pages here.

Mr. Neumann: There are three pages each year and there are ten years; that is 30 pages. Here is one with 2 pages only, so that it will probably be about 25 pages.

Mr. Goetz: There are more than two pages in some of these.

The Master: Let us get to something else, and you men can talk that over afterwards.

Mr. Neumann: I will now take the annual reports of the company.

Now, going back to the volume "New York & Queens Gas Company monthly reports for the year 1919," I offer the page marked "New York & Queens Gas Company, cubic feet of gas made, sent out and unaccounted for, for the years 1919 and 1918, a comparative table."

Mr. Goetz: I make the same objection.

1584 The Master: Objection overruled.

Mr. Goetz: Exception.

Marked Defendants Exhibit A-52.

Mr. Neumann: I take it that your Honor has looked at this page. If not, it is quite interesting from that standpoint.

The Master: I looked at the page that you have been offering in evidence, and I saw some comparative results that were unaccounted for.

Mr. Neumann: Here it indicates that the unaccounted for in 1919 was 44 per cent higher than in 1918.

The Master: What do you mean. There was 11.02 per cent in 1919 and 8.07 per cent in 1918. You offered this page before, did you not?

Mr. Neumann: No.

The Master: I saw that.

Mr. Goetz: At this point, may I ask the indulgence of the Court to offer in evidence from each of the volumes from which Mr. Neumann has offered in evidence pages, the pages covering the number of cubic feet of gas made, sent out and unaccounted for, so that we have them all together.

Mr. Neumann: That is a general offer. I could have done the same thing, but I preferred to have each page offered.

The Master: Mr. Goetz means to offer each page.

Mr. Neumann: He ought to do it the same as we have.

The Master: Have you any objection?

Mr. Neumann: Yes. I want to look at each one as it goes in.

The Master: Have you any objection to his doing it at this time?

1585 Mr. Neumann: Have I any objection to his interrupting my examination?

The Master: Yes.

Mr. Neumann: Not a bit.

The Master: We have 1919 and 1918. Now you want 1917.

Mr. Goetz: I offer in evidence the page in the 1918 volume entitled "Cubic feet of gas made, sent out and unaccounted for, the month of December, 1918 and 1917, and 12 months ending December 31, 1918 and 1917."

Marked Complainant's Exhibit 100.

Mr. Goetz: I offer the same page from the volume marked 1917 entitled, "Cubic feet of gas made, sent out and unaccounted for, for the month of December, 1917 and 1916, and 12 months ended December 31, 1917 and 1916."

Marked Complainant's Exhibit 101.

Mr. Goetz: I offer in evidence the page from the volume marked 1916, entitled "Operating Expenses 12 months December, 1916 and 1915", so much of that page as appears under the title "Statistics" relating to the quantity of gas made, used and unaccounted for.

Mr. Neumann: The only question that was in my mind, your Honor, was the offer of a part of a page, and since he only wants to offer such part that relates to the unaccounted for gas—is that correct, Mr. Goetz?

Mr. Goetz: As would enter into a determination of the unaccounted for gas.

Mr. Neumann: Yes; that is all. I make no objection. That is all that part of the page which is contained under the word "Statistics" three-quarters of the way down on the page.

1586 Mr. Goetz: Also the title so as to identify it "12 months December of 1916 and 1915".

Mr. Neumann: Yes.

Marked Complainant's Exhibit 102.

Mr. Goetz: I offer from the volume marked "1915" so much of the page, entitled "Operating Expenses, twelve months, December, 1915, 1914," as appears under the title or caption, "Statistics," showing the quantity of gas made, sold and unaccounted for.

Mr. Neumann: The offer here I take it is limited to that part of the page which comes after the word "Statistics."

Mr. Goetz: That is correct.

Marked Complainant's Exhibit 103.

Mr. Goetz: I offer in evidence so much of the page of the volume marked "1914," which is entitled, "Operating Expenses, twelve months, 1914-1913," as appears under the caption "Statistics," showing the quantity of gas made, sold and used with the pencil corrections of figures or changes of figures.

The Master: I do not see any sense in going any further back than that.

Mr. Goetz: There is one year I want to get in; that 18 per cent.

Mr. Neumann: This is evidence you objected to us getting in, and here you are putting them in yourself, admitting and conceding that they are all correct.

Marked Complainant's Exhibit 104.

Mr. Goetz: I offer in evidence the volume endorsed "1912 and 1913," so much of the page, entitled "General Report for Twelve Months and December, 1913"——

Mr. Neumann: I offered that whole thing.

Mr. Goetz: This entire thing.

1587 Mr. Neumann: Yes; that is all in evidence.

Mr. Goetz: Then I withdraw that offer.

Mr. Neumann: I offer in evidence the annual report of the New York & Queens Gas Company to the Public Service Commission of the State of New York for the First District for the year 1919, page 28, lines 1 to 6 inclusive, the whole of page 55, and page 59, line 19, the credit side; that is all we want.

Mr. Goetz: I object to the offer in evidence of a fragment of the report of the company without the explanatory information contained in the other pages of the report.

The Master: I will receive it as offered. You can offer the balance of the book or any part of the book that explains it.

Considered as marked Defendants' Exhibit A-53.

Mr. Neumann: I now offer in evidence from the annual report of the New York & Queens Gas Company to the Public Service Commission for the First District, State of New York for the year 1918, page 28, lines 1 to 5 inclusive, and page 55.

Mr. Goetz: I object to the separation of statements of a particular page from the context of the page. There is a great deal of printed matter without which the statements appearing on particular lines is unintelligible. The statements which are not accompanied by the explanations which the Commission itself made would only be misleading.

The Master: Objection overruled.

Mr. Goetz: This shows exactly what I contend for. If you will read those lines without reading the captions and the rest of that page, it is absolutely unintelligible.

1588 The Master: You offer the rest of it that will make it intelligible; objection overruled.

Mr. Goetz: Exception.

Considered as marked Defendants' Exhibit A-54.

Mr. Neumann: I now offer in evidence the annual report of the New York & Queens Gas Company to the Public Service Commission for the First District of the State of New York for the year ending December, 1917, page 28, lines 1 to 4, inclusive, and page 55.

Mr. Goetz: I make the same objection and point out particularly with respect to this offer and the two previous offers, that the lines on page 28 do not relate to anything involved in the production and distribution of gas. They relate to outside investments made by this company. This criticism applies only to page 28.

Mr. Neumann: It does not apply to page 55?

Mr. Goetz: You offered the entire page which shows that you perceived the defect in your offer of the other page.

The Master: Objection overruled.

Mr. Goetz: Exception.

Considered as marked Defendants' Exhibit A-55.

Mr. Neumann: I now offer in evidence from the annual report of the New York & Queens Gas Company to the Public Service Commission for the First District of the State of New York for the year 1916, from page 28 thereof, lines 1 to 3 inclusive, and the whole of page 55.

1589 Mr. Goetz: I make the same objection.

The Master: Objection overruled.

Mr. Goetz: Exception.

Considered as marked Defendants' Exhibit A-56.

Mr. Neumann: I now offer in evidence from the annual report of the New York & Queens Gas Company to the Public Service Commission for the First District, State of New York for the year ending 1915, from page 28, lines 1 and 2 and the whole of page 55.

Mr. Goetz: I make the same objection.

The Master: Objection overruled.

Mr. Goetz: Exception.

Considered as marked Defendants' Exhibit A-57.

Mr. Neumann: I now offer in evidence the annual report of the New York & Queens Gas Company to the Public Service Commission for the First District, State of New York for the year ending December 31, 1914, page 28, line 1, and the whole of page 55.

Mr. Goetz: I make the same objection.

The Master: Objection overruled.

Mr. Goetz: Exception.

Considered as marked Defendants' Exhibit A-58.

Mr. Neumann: I now offer in evidence from the annual report of the New York & Queens Gas Company to the Public Service Commission for the First District of the State of New York for the year ending December 31, 1913, the whole of page 55.

Mr. Goetz: I make the same objection.

The Master: Objection overruled.

Mr. Goetz: Exception.

Considered as marked Defendants' Exhibit A-59.

1590 Mr. Neumann: I now offer in evidence from the report of the New York & Queens Gas Company to the Public Service Commission for the First District of the State of New York for the year ending December 31, 1912, the whole of page 55.

Mr. Goetz: I make the same objection.

The Master: Objection overruled.

Mr. Goetz: Exception.

Considered as marked Defendants' Exhibit A-60.

Mr. Neumann: I now offer in evidence from the Annual Report of the New York & Queens Gas Company to the Public Service Commission for the First District of the State of New York for the year ending December 31, 1911, the whole of page 55.

Mr. Goetz: Same objection.

The Master: Objection overruled.

Mr. Goetz: Exception.

Considered as marked Defendants' Exhibit A-61.

Mr. Neumann: I now offer in evidence from the Annual Report of the New York & Queens Gas Company to the Public Service Commission for the First District of the State of New York for the year ending December 31, 1910, the whole of page 39.

Mr. Goetz: Same objection. I understand that I do not need to repeat in order to save an exception, to repeat my objection to the inadmissibility of statistics or data as to the operations, finances, revenues and expenditures for years prior to 1918, so that I may save myself the trouble of making objections.

The Master: The same objection runs all through.

1591 Mr. Goetz: Exception.

Considered as marked Defendants' Exhibit A-62.

Mr. Neumann: I now offer in evidence from the Annual Report of the New York & Queens Gas Company to the Public Service Commission for the First District of the State of New York for the year ending December 31, 1909, the whole of page 39.

Mr. Goetz: Same objection.

The Master: Objection overruled.

Mr. Goetz: Exception.

Considered as marked Defendants' Exhibit A-63.

WILLIAM R. BIRDSLEY, a witness called for the defendants, was sworn and testified as follows:

Direct examination.

By Mr. Tobin:

Q. What is your position with the City Government, Mr. Birdsley?

A. I am Acting Chief Gas Inspector of the Department of Water Supply.

Q. Gas Inspector?

A. Or Examiner, whatever you want to call it.

Q. What are your duties?

A. My duties are to supervise the testing of the gas supplied by the various gas companies throughout the city.

Q. How long have you held that position?

A. I have been the Acting Chief Gas Examiner since 1913.

1592 Q. What were your duties prior to that?

A. Prior to that I was Gas Inspector from the year 1906 to 1913.

Q. Did you from 1906 to 1913 have charge of the gas inspection of the city?

A. I did not, no.

Q. Where are the gas inspection stations in the city located?

Mr. Vilas: Objected to as immaterial.

The Master: We do not want that. What we want to know is where the gas inspection station is in Flushing.

Q. Where is the gas inspection station in the city for the New York & Queens Gas Company?

A. It is located at Boerum and Madison, Flushing, a section called Murray Hill.

By the Master:

Q. Where is the holder?

A. The holder is down by the Bay.

Q. How far away from the testing station?

A. On an air line it is not less than one mile. I cannot say exactly the distance.

Q. But by pipe how far is it?

A. That I could not say.

Q. Is it considerably over a mile by pipe?

A. It may be, depending on the way the gas travels through the various mains.

By Mr. Tobin:

Q. How many mains do you test for gas at the Flushing Station?

Mr. Vilas: Just a moment, Mr. Birdsley. That is objected to, and any further examination along this line, on the ground that it is incompetent, irrelevant and immaterial, not within any issue raised by the pleadings in this case.

1593 The Master: I thought one of the defendants interposed an answer setting that up.

Mr. Vilas: One of the defendants interposed an answer which raises a very limited issue, and which in view of the proof made by the complainant does not now leave any issue in the case, and that was the Public Service Commission. I have the amended answer here and would be glad to call your Honor's attention to it. They assumed that this issue, if it is one, required a separate defense, and

proceeded to put it in. It comprises paragraph 12 of the amended answer.

The Master: They did set it up, did they not?

Mr. Vilas: They set up certain violations, and then they proceed as follows: "This defendant alleges upon information and belief that the failure of the complainant herein to furnish gas of the candlepower as provided by the said Act of 1906 was occasioned by the fact that during the year 1918 the complainant voluntarily and without compulsion of law, pursuant to a contract made by it, extracted from the gas after its manufacture and before its distribution to the consumer, much of the enriching oil contained therein, for the sole purpose of manufacturing the product known as toluol, with the result that the gas as tested, as provided by such statute, had a candlepower much less than 22."

Mr. Neumann: What about the first part of that affirmative defense?

1594 Mr. Vilas: It alleges failure to produce candlepower of 22 thereto.

Mr. Tobin: 1918 and prior thereto.

Mr. Neumann: 1918, 1919 and prior thereto.

Mr. Vilas: No.

Mr. Neumann: You better read it.

The Master: I will read it; let me see it (taking paper).

Mr. Neumann: 1918 to date and prior thereto. There is no question about that.

The Master: The answer says to date.

Mr. Vilas: But the paragraph that I read says that it was due solely to something we did not do.

Mr. Cummings: You did not read the right one.

Mr. Neumann: You did not read all of the answer, Mr. Vilas.

The Master: I have read the answer. The objection is overruled.

Mr. Vilas: Exception.

Q. You tap how many mains running into this station at Flushing?

A. The gas supplied to our testing station comes from one main.

Q. When were the mains installed and the risers run into the building?

A. 1907. I would like to correct that. The riser was installed in the building in 1907.

Q. Do you test the gas of the New York & Queens Gas Company at the Flushing station?

A. I do not personally.

Q. But you supervise the testing of the gas at the Flushing station of the New York & Queens Gas Company?

1595 A. I supervise the testing.

Q. What is the system of testing the gas at the Flushing station of the New York & Queens Gas Company?

Mr. Vilas: That is objected to as incompetent, irrelevant and immaterial, not within the issues.

The Master: If you mean what is the apparatus here, you better bring out that the witness knows what apparatus is there and has seen it.

Q. What is the procedure for the testing of the gas?

The Master: No, I will not permit that.

Q. What machine or machines do you use?

Mr. Vilas: That is objected to in form.

The Master: Let us get down to it, Mr. Tobin; I know what you want, or at least I think I do.

By the Master:

Q. Is there a testing machine over there?

A. Yes, a photometer.

Q. Do you know what it is?

A. Yes, sir.

Q. How recently have you seen them?

A. Within a few months.

Q. And over what period of time have you known that machine, and how long has it been there?

A. The photometer used at Flushing is the original photometer installed in 1907.

Q. How often have you seen it?

A. Oh, I have seen it a great number of times.

Q. Do you get over there periodically or occasionally?

A. Oh, yes, I get around.

1596 The Master: Do you want him to describe the machine there.

Mr. Cummings: Yes, he says he supervised it. I do not see why it is necessary to go into the details.

The Master: He can explain, if you want him to, the kind of machine there at that testing station.

The Witness: The instrument used for testing candle power at the Flushing photometric station is a modified form of Sugg-Letheby 60-inch bar photometer.

Q. What test do you make of the gas?

The Master: What do you mean, what test does he make of the gas?

Q. You test the gas for what, what purpose?

A. The tests are made for candle power, pressure, sulphuretted hydrogen, sulphur, ammonia and heat units.

The Master: You mean that is what they are supposed to be tested for?

The Witness: That is, the inspector makes those tests at this station.

The Master: Strike that out, that the inspector makes those tests. The inspector is supposed to make those tests.

The Witness: He is.

The Master: That is what he is sent there for?

The Witness: He is.

The Master: Now the question is whether he does it.

Mr. Neumann: It is presumed that a public official does his duty until the contrary is shown.

1597 The Master: I am not going to let Mr. Birdsley swear to it.

Mr. Neumann: All he needs is to swear to the fact that that is what the statute requires, and then the law presumes he does his duty.

The Master: I will not let him testify what the statute requires. His testimony is at this time he is the supervising inspector, or whatever he is called.

By the Master:

Q. I take it, Mr. Birdsley, the tester is under you?

A. Yes.

Q. They are supposed to go to these stations and test the gas for the various things you have described?

A. Yes, sir.

Q. For that purpose you have a testing machine over at the station?

A. Yes, sir.

Q. And these inspectors make reports to you under oath; is that the idea?

A. Yes, sir.

The Master: What else do you want to ask Mr. Birdsley?

By Mr. Tobin:

Q. How are the tests for candle power conducted, Mr. Birdsley?

Mr. Vilas: That is objected to.

The Master: Objection sustained.

Q. Have you tested the gas yourself?

The Master: I am going to sustain that objection, too.

Mr. Vilas: That is objected to.

1598 The Master: I think I went further in the Consolidated case than I should have gone with Mr. Birdsley's testimony.

Q. Have you seen the men doing any testing at the Flushing station?

Mr. Vilas: That is objected to as immaterial.

The Master: I will let him say that.

A. I have.

Q. How frequently?

A. Practically every time that I visit the station.

Mr. Vilas: That is no answer. I move that that be stricken out.

The Master: No, I will deny that motion. There is no use wasting time on that, Mr. Tobin; unless Mr. Birdsley can tell us the days and the names of the testers whom he saw working, I am not going to let him testify to it.

Q. How often are the tests made at the Flushing station of the New York & Queens Gas Company?

The Master: To your own knowledge, now, that you yourself saw; not what somebody reports to you. Can you say?

Mr. Vilas: Objected to.

A. Why, it is rather a hard question.

The Master: Then the answer to it is you cannot say unless you are there.

The Witness: The law requires that the inspectors make tests daily, and it is in the report.

Mr. Vilas: I move to strike it out as not responsive.

The Master: Motion granted.

1599 Q. Have you seen the men do any testing?

The Master: He says he has.

Q. You have watched them do the testing?

Mr. Vilas: I object to that.

The Master: I will allow that. He has already said that.

Mr. Vilas: He said so three times.

Q. How frequently have you seen them do the testing?

Mr. Vilas: I object to it as already fully covered.

The Master: I will allow him to say that.

A. I cannot say exactly how frequently. I have watched them test nearly every time I visit the station.

Q. How often do you visit the station?

A. I have no particular time to visit.

Q. Last week how often did you visit the station?

Mr. Vilas: I object to that as leading and suggestive.

The Master: I will allow that.

Mr. Vilas: Exception.

A. I was not there last week.

By the Master:

Q. On an average how many times a year do you get over to Flushing, half a dozen times a year?

A. More than that, I guess.

Q. How many, about?

A. We will say half a dozen and be safe.

The Master: Now the witness states that he gets over to the testing station about half a dozen times a year, and he sees the men testing.

1600 By Mr. Tobin:

Q. Who does the testing at the Flushing station of the New York & Queens Gas Company?

Mr. Vilas: That is objected to, not apparently within the knowledge of the witness.

The Master: Overruled.

By the Master:

Q. Who was the inspector assigned to that station?

A. Mr. Robert A. Wacker.

Q. How long has he been assigned to that station?

A. Since about 1916.

Q. He has been there during 1916, 1917, 1918 and 1919 and up to this time in 1920?

A. He has.

Q. Is he in court?

A. He is.

The Master: Then let us have Mr. Wacker and he will tell us what it is.

Mr. Tobin: We would like to finish with this witness, your Honor.

The Master: I think you have finished. However, you may put some more questions.

Q. How often are these tests made at the stations?

The Master: Objection sustained. I thought I saw Mr. Wacker in court and recognized him, that is why I am limiting Mr. Birdsey's testimony.

Q. From your experience is the test made at this station the proper way of testing candle power?

Mr. Vilas: That is objected to.

The Master: Objection sustained.

1601 Q. Is it made in accordance with the provisions of Section 522 of the Greater New York Charter, in relation to the inspection of illuminating gas?

Mr. Vilas: That is objected to.

The Master: Objection sustained.

Q. Have you been present at the Flushing station of the New York & Queens Gas Company at any time when Mr. Wacker has tested gas?

A. I have.

Q. If you will, please describe what was done at the time you were present, when the gas was tested by Mr. Wacker at this station?

Mr. Vilas: I object to that. Mr. Wacker is in court.

The Master: The objection is sustained. Mr. Wacker is in court and can tell us better than Mr. Birdsley what he did.

Mr. Cummings: Perhaps not. He was testing.

The Master: Then he ought to know what he was doing.

Mr. Cummings: Mr. Birdsley was looking at him.

Mr. Neumann: Here is the position, if the Court please: Here is the chief of the bureau who is watching one of his subordinates do something in conformity with the statute, and he is now asked to state what he saw his subordinate do. I think that meets all the rules of evidence and is competent evidence.

The Master: Yes, it is competent evidence with reference to the particular occasion when he saw Mr. Wacker working. I am ruling it out because I do not believe it is at all useful in this case, in view of the fact that Mr. Wacker is here. You can put Mr. Wacker on and Mr. Wacker will testify to what he did, and after you are through with Mr. Wacker's testimony, if you think it is necessary to have Mr. Birdsley corroborate what Mr. Wacker has testified to, and have him testify to the times he was there and he saw Mr. Wacker do those things, I will let you recall him.

Mr. Neumann: Exception.

The Master: We are going to put Mr. Wacker on the stand to prove these things, not Mr. Birdsley.

Q. Does Mr. Wacker make the reports of the testing of the gas at the Flushing station of the New York & Queens Gas Company to you?

Mr. Vilas: Objected to.

The Master: The objection is overruled.

Mr. Vilas: That is indefinite and vague.

The Master: Overruled.

By the Master:

Q. Mr. Wacker makes reports, does he not?

A. He makes reports.

Q. Under oath?

A. Yes.

Mr. Tobin: Are they written reports?

The Witness: Written reports, under oath.

Q. And he sends in his sheet showing his testing figures?

A. He does.

Q. His original figures, as you understand them?

A. They are.

By Mr. Tobin:

Q. They are made under oath?

A. They are.

Q. You have those reports here in court?

A. I have not the reports. I have the original sheets that the tests were made on. I failed to bring the reports down, because I did not know they were wanted; but I can furnish them if desired.

Mr. Tobin: We wished to offer them in evidence, if the Court pleases.

The Master: I imagine you would. You better get them.

Mr. Cummings: They are competent right now, are they not, as public records?

The Master: But I will not take them. I am going to have Mr. Wacker testify to something before I take the reports.

Mr. Cummings: Are you going to have a public officer swear that he does or performs his duty?

The Master: Yes, I am going to have Mr. Wacker get on this stand and I am going to have him testify to what he did, and I am going to bring out from Mr. Wacker, as I did from Mr. Wacker on the Consolidated trial, that it is a matter of human judgment, subject to human error. You might as well understand it now as any other time.

Mr. Neumann: To which we respectfully except.

Q. What is the method that you have observed and that you yourself have used and that you have seen other men use, including Mr. Wacker, in the testing of gas under the statute as provided for the City of New York?

Mr. Vilas: That is objected to.

The Master: Objection sustained.

1604 Q. What is the method that you have observed and that you yourself have used and you have seen other men use?

Mr. Vilas: Objected to.

The Master: Same ruling.

Mr. Tobin: We respectfully except.

The Master: The question here is what did Mr. Wacker do. Mr. Wacker is in court, and if you want to prove that Mr. Wacker tested this gas and found it less than 22, put him on the stand and prove it.

Mr. Tobin: But this man is a proper witness to indicate the method that was used.

The Master: Go ahead now. If you think that I or any other court will throw out this case upon testimony of Mr. Birdsley, when the man who actually did the work is in court, you are very much mistaken.

Mr. Neumann: That is not the question, if the Court pleases. The question here is that the chief of the staff is now asked to describe the general course under a statute.

The Master: But, Mr. Neumann, I do not want a general course. I want the particular thing that Mr. Wacker did.

Mr. Neumann: But you allowed in this case, for instance, the witness Alrich to go on and testify about what equipment was over there, without any knowledge on his part as to whether they owned it, or on what theory.

The Master: Do not let us argue something that is not involved in this particular question.

1605 Mr. Neumann: Now we are putting a public official on the stand who endeavors to show what the course of conduct is in his office in accordance with the statute.

The Master: And I say I am not interested in the course of conduct.

Mr. Neumann: You can measure the standard of the witness who did the actual work by the course or standard of the office.

The Master: I have made my ruling.

Mr. Neumann: Exception.

The Master: You may as well throw that Consolidated record aside, Mr. Tobin; I am not going to let you follow it.

Mr. Cummings: You are not going to reverse yourself on the Consolidated, are you?

The Master: I may modify what I did in the Consolidated case. I learned some things in the Consolidated as it developed.

Mr. Tobin: If the Court please, we offer the provisions of law having to do with the inspection of illuminating gas, in evidence. It is known as Section 522 of the Greater New York Charter.

Mr. Vilas: That is objected to, not only because it is a public statute, but because the sections of law or the statutes involved in this case are already in evidence. Here is Chapter 125 of the Laws of 1906, which provides for the standard for testing of gas and the candle power to be observed.

The Master: I will overrule the objection. That chapter will be considered in evidence by the next exhibit number.

Mr. Vilas: Exception.

Considered marked Defendants' Exhibit A-64.

1606 Mr. Tobin: If we are compelled to withdraw this witness at this time, we say it is under compulsion and duress. That is, we feel this man is a proper person to testify to the testing of gas in the City of New York. He is the chief official in that branch of the service. It cannot be said that he is not complying with the statute, it cannot be said there is no test made at the Flushing station of the New York & Queens Gas Company, because there was offered in evidence here previously the work sheets of the New York & Queens Gas Company, which set forth the tests as made by the City and the reports as made by the inspector at this station are turned over to this official under oath. I think that he is properly qualified to go on and say what is the test or the method or mode of testing gas in the City of New York.

The Master: I have made my ruling, Mr. Tobin: I am not interested in the method or mode of testing gas in the City of New York.

Mr. Tobin: We take an exception.

The Master: I am interested to know what Mr. Wacker did in Flushing.

Mr. Tobin: We take an exception.

The Master. Mr. Wacker's testimony to my mind is the best testimony we can get as to what he did and as to what he observed.

Mr. Tobin: We offer this witness for cross-examination.

The Master. Any cross?

Mr. Vilas: No.

1607 ROBERT A. WACKER, a witness called by the defendants, being duly sworn, testified as follows:

Direct examination

By Mr. Tobin

Q. What is your full name, Mr. Wacker?

A. Robert A. Wacker.

Q. What is your position with the City Government, Mr. Wacker.

A. Gas inspector.

Q. When were you appointed to this particular position?

A. Do you mean——

Q. As Gas Inspector—Gas Examiner?

A. Well, my official title is Gas Inspector.

Q. When were you appointed to that particular position?

A. I think it was in October, 1908.

Q. From a civil service list—taken from a civil service list?

A. Yes, passed the examination and appointed in due course.

Q. And you have been continuously in this particular department since the date of that appointment?

A. Yes, in the Department of Water Supply.

Q. Where are you stationed at present as Gas Inspector?

A. I cover the Flushing territory part of the day, and the Williamsburg section of Brooklyn the other part.

Q. How long have you been at Flushing?

A. I have been assigned to the Flushing station in 1916. I do not recall just when.

Q. In 1916?

A. About that time, yes.

1608 Q. What gas is tested at the Flushing station?

A. The New York & Queens Gas Company.

Q. Will you kindly explain for the benefit of the Court just how the mains and risers of the New York & Queens Gas Company come into the station?

A. They come in from the Barnes Street side, in through the cellar and up through the hall way into the station.

Q. Up to the testing room?

A. Up to the testing station—the testing room, yes.

Q. Give us a brief description of just how the testing room is——

A. I might add to that, that the gas is taken from the same riser that the Consolidated get theirs from, that the New York & Queens get theirs from.

Q. From the same riser?

A. The same riser, yes.

Q. Briefly describe the testing room, that is as to what is contained in the testing room, the apparatus and the other machinery that is there for the purpose of testing the gas at the New York & Queens Gas Company?

A. By the testing room I assume you mean the photometer room?

Q. All that is there.

A. Well, the photometer room, which is darkened, contains the Sugg-Letheby Photometer, which consists of numerous apparatus. The main part of that is the 60-inch bar, at the end of each end of the bar being a light to be tested, and the standard. The standard is candles, two candles in this case, read on a balance. They are weighted up on a balance. The other part of the apparatus consists of governors, both the dry and the balance governor, to control the rate of flow of the gas, and a meter to measure the amount of gas sent through.

Q. For what purposes do you test the gas?

A. I test the gas for candlepower and heat value, for impurities such as sulphuretted hydrogen, sulphur and ammonia.

Q. Do you test the gas for pressure?

A. I also record the daily pressures, maximum and minimum.

Q. Briefly state how the test for candlepower is conducted at the Flushing station of the New York & Queens Gas Company?

The Master: By this witness.

Mr. Tobin: By this witness, yes, sir.

The Master: How you do it day after day.

A. Well, I have the gas flushed through the photometer before I make my tests. I assure myself of that.

The Master: What do you do through the photometer?

Mr. Neumann: Flush the gas.

The Witness: It is flushed through the photometer to be sure that I get the gas through the mains. In fact I have the gas coming all the time, even during my absence, so I know I have fresh gas. Then I regulate the gas at 8 to 5 feet by means of the balance governor. I put on my candles, light them up, and see that the candles are burning properly, and then when I am ready for my test, of course, I have my room well ventilated, too.

1610 By the Master:

Q. You have your room what?

A. Ventilated.

Q. What is that for?

A. So it does not affect the results. If the ventilation is poor, why, your results would not be reliable. Poor ventilation affects the lighting, the luminosity of both the light you are testing and the standard. So I close up the room sufficiently to prevent drafts affecting the candles and the gas, and I adjust the balance on which my candles are situated so that they will fall within a minute or so, and the weight, and when the candles fall at the zero mark on the scale I start the meter going which has been previously set to zero.

This is assuming, of course, I have regulated my gas flow to 5 feet previously. Then at intervals of a minute apart I take ten readings, after throwing on two 40 grainweights or 40 grains in the pan of the balance in which the candles are located. At the end of ten minutes or approximately ten minutes, the candles will fall if they are proper candles, and then I shut off my gas after that tenth reading when the candles have again passed the zero point. From the observation of the meter, temperature of the gas in the meter, and the readings contained, and the consumption, the time of consumption of sperm—from the data obtained from that I calculated my candlepower.

Q Do I understand you look through something to observe the comparative luminosity of the two lights?

A. Yes, taking the readings consists in looking into a disc that is mounted on what is called a sightbox.

1611 The reflection of the disc is shown in mirrors placed at angles with the disc at the back. You look into those mirrors and by sliding the sight box on the bar you get to a point where the lights are of equal intensity.

The Master: In other words, when your judgment is, or when you believe you see the light of equal intensity you take your reading?

The Witness: Yes.

The Master: Is that correct?

The Witness: When the lights are of equal intensity I take my reading.

The Master: You can only tell when they are of equal intensity by looking at it?

The Witness: Yes, sir.

The Master: It depends upon your judgment of what you see, doesn't it?

The Witness: Yes, but in times past we have checked up the different people and they usually all agreed.

The Master: I understand that, but the point I want to get at is and the point I want to get on the record——

The Witness: It relies on my judgment.

The Master: There is the human element in it——

Mr. Cummings: A human element, you mean?

The Master: The human element of sight?

The Witness: Yes.

The Master: It depends upon your sight?

The Witness: Yes.

The Master: And what you believe?

The Witness: Yes.

1612 By Mr. Neumann:

Q You don't wear glasses, do you?

A. No, not as a general thing.

Q You don't have to wear glasses?

A. No.

The Master: Do you as an exceptional thing?

The Witness: I did one time, but I found I didn't need them. In fact when I went to the oculist he said I didn't need them.

Q. When was that?

A. I guess that was along about 1917. I was not working in Flushing at the time, at that period I was working in another station.

Q. You had your eyes tested by an oculist?

A. Yes.

Q. Who said your sight was good, and you didn't need glasses?

A. Yes, I went to him twice, and he told me that both times.

Q. He prescribed no glasses for you?

A. The first time he prescribed no glasses for me, he said I didn't need them, but he could give me glasses for *your* work if I wanted them, and I said to end all argument I would take them.

By Mr. Tobin:

Q. This particular photometer method is known as what, what do you call it?

A. It is known as the Suggs-Lethby photometer.

By the Master:

Q. Do I understand Mr. Wacker, that what you have just described is what you do every day in testing gas?

A. I do that every working day.

1613 Q. You don't work Sunday?

A. No.

Q. Every day that you go there do you make any notes as you make these readings or observations?

A. Oh, yes, I have to make my data.

Q. What do you make that on?

A. I make that on the form prescribed by the Department, the prescribed form.

Q. Do you make them direct on these forms, or do you put them on other sheets first and then copy them on to the forms?

A. I usually make them direct on the forms.

Q. Do you sometimes put them on loose sheets and then carry them forward on to the forms?

A. No, I don't recall. In the beginning of my position as inspector I did that, but when I had to take over two stations I found it took more time than I could afford to give to it.

Q. So, your practice for the past two years has been to make the data directly on the form?

A. Yes.

By Mr. Tobin:

Q. The form prescribed by the Department?

A. Yes.

The Master: In lead pencil or in ink?

The Witness: I write them in pencil.

By Mr. Neumann:

Q. When you refer to the early part of your career, you mean in 1908, and around that time, when you first became connected with the Department?

A. Yes.

The Master: Did you say 1909?

The Witness: 1908 I said.

1614 Q. You don't mean that to apply from the year 1917, to date, since you have been over at the Flushing station?

A. I am pretty sure I did not.

By Mr. Tobin:

Q. How often do you make tests of the gas at the Flushing station of the New York & Queens Gas Company, as to each day?

A. Why, if the gas is very good I make one test; if there is doubt about the gas I make two tests.

Q. But you do make a test what you call every working day?

A. Yes, I make a test every working day.

Q. What time of the day do you make those tests, usually?

A. Why, I make the tests at different times, no regular time, sometimes in the morning, sometimes in the evening, sometimes in the afternoon.

Q. And that time is entered on the sheet?

A. That time is entered on the sheet.

Q. On the sheet that you send to the Department of Water Supply?

A. Yes.

Q. And that is sworn to by you?

A. Yes.

Q. From your knowledge of the testing of gas, is this Suggs-Lethby photometer the proper method to test the candle power of gas?

Mr. Vilas: I object to that as calling for a conclusion.

Mr. Tobin: I asked him from his knowledge.

Mr. Vilas: He has not shown it, one test a day for three or four years, and that one place.

1615 Mr. Tobin: That is all this man does, test gas.

Mr. Vilas: With this one machine.

Mr. Neumann: He also tests at Williamsburg, don't forget that.

The Witness: I have two companies.

Mr. Neumann: If he had more than that you might be here saying that he has too much to do, and can't do it right.

The Master: I will sustain the objection. I will let you ask Mr. Birdsley, if you want to, as an expert, whether this is the usual method of testing gas.

Mr. Neumann: That is exactly the point—

The Master: I told you I would let you recall him after you had shown by Mr. Wacker just what he does.

By Mr. Tobin:

Q. Is the Suggs-Lethby photometer a standard method of testing gas?

Mr. Vilas: I object to that.

The Master: I will not let this witness say; I don't think he has shown sufficient knowledge to say. Mr. Wacker, you use the method the department assigned to you, don't you?

The Witness: Yes, sir.

The Master: And you always have?

The Witness: Yes, sir.

The Master: You have never used any other?

The Witness: No.

By Mr. Neumann:

Q. Have you seen any other, Mr. Wacker?

A. Any other method?

1616 Q. Yes.

A. Why I have used the portable method outside. That was more for mantle light testing, it really didn't have anything to do with gas testing.

Q. How did that compare with the method you used?

Mr. Vilas: I object to that.

The Master: Objection sustained

By Mr. Tobin:

Q. What checks have you used as to the tests made by you, as to the accuracy of the tests as recorded on these sheets each day at this station?

A. Well, I usually check up with a second test.

Q. That is, if you are in doubt?

A. If I am in doubt.

Q. You check up the second time?

A. I check up with another test.

The Master: What creates the doubt?

The Witness: Well, I assume that if it is 21½ there may be a reasonable doubt of course.

The Master: Why?

The Witness: Well, a question may come up about personal error, or something like that.

The Master: What kind of a personal error?

The Witness: Well, a question of eyesight I suppose. I am not sure, I can't tell what the gas company thinks.

Q. Have you checked with other observers as to the tests made by you at this station?

1041

A Yes, I have checked up with Mr. Birdsley and I have checked up with other inspectors.

1617 The Master: What were the occasions when you checked with Mr. Birdsley, what brought that about?

The Witness: I don't know of any particular occasion; it is simply to satisfy ourselves.

Q What was the result of those check-ups, Mr. Wacker?

A That is pretty hard to remember.

By the Master:

Q Now, in making these reports, did you have to make any calculations?

A Yes.

Q Did you have any tables which you used in those calculations?

A Yes, we have log tables.

Q Where did you get them?

A Each inspector gets his table from the official copy at the office, at least he makes a copy of them.

Q Have you got those with you?

A Yes.

Q Let us have them and get them in evidence. Let us get this whole story on the record.

A These are papers that have been copied by the previous inspector who has now left the department.

Q Are these what you used?

A Yes.

Q What is the first one there, what do you call that? What table is that?

A Well, there are the log factors for the barometer and also the temperature.

Q The temperature and barometer logarithms?

A The logarithms of the barometer and the temperature of the gas.

1618 The Master: Don't you think you had better offer these Mr. Tobin?

Mr. Tobin: Yes.

Mr. Vilas: I object to the offer.

The Master: Objection overruled.

Mr. Vilas: There is no proof of the correctness of these tables they were copied by another inspector.

The Master: I know there is not, but it is to prove what he did.

Paper received in evidence and marked Defendants' Exhibit A-66.

Q What are these?

A This and this are all the same.

Q Are they duplicates?

A No.

Q They are part of the same thing?

A Yes.

Q These three sheets?

A. Yes.

Q. What are they?

A. They are the log factors for the observed candle power of the gas. Not the observed—I should not say that—the log factors for the candle power. We refer to those to get the logs for the observed, and also the corrected candle power.

Q. These are the sheets that you used?

A. Yes, sir.

Q. And the figures on which you made your calculations?

A. Yes, sir.

Q. On which you based your report?

A. Yes, sir, those are the figures between 18 and 26. If the candle power is lower than 18 I would have to take the log factors from an ordinary table of logarithms, which can be found in any engineering book.

1619 Q. Between 18 and 26 you used these particular sheets?

A. Yes, sir.

The Master: Mr. Tobin, do you offer those in evidence?

Mr. Tobin: Yes.

Mr. Vilas: I make the same objection.

The Master: Objection overruled.

Mr. Vilas: Exception.

Paper received in evidence and marked Defendants' Exhibit A-66.

Q. Now, this other paper which you have handed me is what?

A. Those are log factors for the consumption of sperm of two candles.

Q. And this is the paper you used to make your calculations for that?

A. Yes, sir.

The Master: Do you want to offer that, Mr. Tobin?

Mr. Tobin: Yes.

Mr. Vilas: I make the same objection.

The Master: Objection overruled.

Mr. Vilas: Exception.

Paper received in evidence and marked Defendants' Exhibit A-67.

Q. Do you use anything else in making calculations, any other book or paper?

A. Not for my candle power calculations.

The Master: Anything else, Mr. Tobin?

By Mr. Tobin:

Q. Are you familiar with the provisions of the Greater New York Charter having to do with the testing of gas?

1620 Mr. Vilas: That is objected to as not relevant to this issue.

The Master: I will let him say he is familiar with it.

Q You have read the provisions of the Greater New York Charter?

The Master He says he is familiar with them.

A I have.

Q You believe that you conform with the provisions of the statute in testing the gas in the tests that you make at the New York & Queens Gas Company's Flushing station?

Mr Vilas I object to that.

The Master Objection sustained.

Q Do you comply with the provisions of the Greater New York Charter in the testing of the gas in the Flushing station of the New York & Queens Gas Company?

Mr Vilas I object to that.

The Master Objection sustained.

Mr Tobin Exception.

Q Your oath of office compels you to comply with the provisions of the Greater New York Charter as to the testing of gas at the Flushing station of the New York & Queens Gas Company, does it not?

Mr Vilas I object to that.

The Master Objection sustained.

Mr Tobin Exception.

Q You make observations, do you not, in the testing—take one test of gas, how many observations do you make?

The Master He said he took ten. It is already covered.

1621 Q Are there any corrections made after the tests, Mr Wacker?

A Corrections made after the tests?

Q Yes. That is, I mean after you have made your observations, then how do you proceed?

The Master He is trying to bring out corrected candle power against observed candle power. Explain it.

A Why, I make corrections for the different factors from these log tables that I put in evidence.

Q Who made these tables that have been offered in evidence?

Mr Vilas Objected to.

The Master Objection sustained. I don't care who makes those tables. He has given us the tables he works on. I don't care who prepares them.

Mr Tobin I thought maybe you wanted some authority on them.

The Master No, he doesn't know anything about it. All he knows about it is that the Department gives him these tables. He doesn't know who prepares them. Do you, Mr. Wacker? You don't know who prepared these tables the man that made them up?

The Witness I computed those at the time, the consumption of gas.

The Master: You computed these tables yourself?

The Witness: I copied the time of the consumption of sperm. The log factors I copied out of the book.

Q. Out of what book?

A. These exhibits.

1622 Q. After you put down the test on these report sheets and they are sworn to you send them where?

A. I send them by mail to the head of my division, the main office of my division, 122 Bowery.

Q. Have you got these reports here?

A. No, Mr. Birdsley has them.

Q. Do you send a card to the New York & Queens Gas Company of the tests that you make on each working day, or on the days that you make a test?

A. Yes.

Q. Just in what form is that, briefly describe it?

A. Well, it is an ordinary postal card on which the typist has typewritten certain data for me to fill in, such as candle power, maximum and minimum pressure, and the date, and time of taking tests, and the B. T. U's.

The Master: You mail them, do you?

The Witness: I mail them to the gas company.

The Master: You fill them out and mail them?

The Witness: I fill them out and mail them. I might add that when I report two tests it does not necessarily imply that I have doubt about either of those tests, because sometimes I may report where the gas is quite high, for the same reasons, such as an afternoon or night test, to see how they compare.

The Master: Anything else, Mr. Tobin?

Mr. Tobin: We have the original test sheets, if your Honor please. We can offer those in evidence, or we can offer in
1623 evidence the original report as made by the witness.

The Master: Make up your mind what you want to do.

Mr. Tobin: We will offer them both.

Q. Have you a tabulation of what these show?

Mr. Tobin: Yes, sir. We offer in evidence the original test sheets from May, 1916, to May, 1919, of gas at the Flushing station of the New York & Queens Gas Company, as made by Mr. Wacker, with the exception of such period of time as he may have been on vacation.

The Master: You are offering the Wacker report for those years, are you?

Mr. Tobin: Yes, sir.

The Master: What is the use of wasting time with this? I see that month after month the average was over 22.

Mr. Cummings: I don't think that is correct.

The Master: That is the fact. Start with March, 1918. Mr. Cummings, the average is 22.31; April, 22.71; May, 22.85; June, 22.28; July, 22.35; August, 22.36; September, 23.69; October, 22.44; 21.58; 22.43. What is the use of wasting time with a defense of that kind?

Mr. Tobin: No, but the average does not show that.

The Master: Nonsense, you don't expect me to find a deliberate violation of law with a record like that?

Mr. Tobin: For the four years between 1914 and 1918 the average shows a violation of law.

1624 The Master: Oh, you won't get anywhere with me on that stuff. Make your record.

We will make this record. Counsel for the defendant Newton offers in evidence all of the original test sheets and the sworn reports made by the witness Wacker during the years 1916, 1917, 1918 and 1919.

Mr. Tobin: I want to go as far back as 1914.

The Master: I will not go back as far as that. The offer is from 1916 to date, inclusive, down to and including the month of May, 1920. That is, the original test sheets and the original sworn reports, all of them on file in the office of this Bureau of Gas & Electricity.

Mr. Goetz: We waive the identification by the witness of each of those sheets, and consent that if any of them at all are admissible under the ruling of the Master, that they be all received at the same time. We object to the offer of the evidence as not competent and not probative of any issue in this case or of any facts which under the law might become admissible in this case.

The Master: Objection overruled, and all of these sworn reports and test sheets will be considered as one exhibit.

Considered as marked Defendants' Exhibit A-68.

Mr. Goetz: As to the sheets for 1916, 1917 and 1918, we object to those particularly on the ground that they are not within the issues in this case.

The Master: Objection overruled.

Mr. Goetz: Exception.

1625 The Master: The Attorney General, as I understand it, offers the original test sheets and the sworn reports for the years 1914 and 1915.

Mr. Neumann: Yes.

The Master: You object to those.

Mr. Vilas: As far too remote.

The Master: I sustain the objection upon the ground that these years are entirely too remote, and that the question is fairly presented by proof for the years 1916, 1917, 1918, 1919, up to and including May, 1920.

Mr. Neumann: Exception. If the Court please, I now call the Court's attention to the answer of the defendant Nixon wherein is set forth a separate defense, wherein I have pleaded the words

"1918 to date and prior thereto," and under that claim the right to offer the years 1914 and 1915.

The Master: I am using my discretion in limiting the period.

Mr. Neumann: To which I respectfully except.

The Master: The Attorney General produces for the information of the Court and of counsel a series of sheets showing what he claims to be the illuminating power corrector of each day and each month of the years 1916, 1917, 1918, 1919 and 1920 down to and including May 20th. I shall receive those as one exhibit over the same objection as was interposed to the original sheets themselves and to the sworn reports, and subject to correction, so that counsel for the complainant may at any time call attention to any errors in the test sheets or in the statements.

Now, that will make the proof on the part of the defendants for the years 1916 to and including May, 1920, as to the candlepower delivered by the witness Wacker.

Now, I see that these sheets are for every consecutive day. I think you will find that some of those days Wacker did not make a report.

Mr. Cummings: He was away on vacation; of course some one else acted.

The Master: You have left them out, have you?

Mr. Cummings: No. I think they are in there with the name of the inspector.

The Master: I am receiving these sheets as an exhibit in so far as they show Wacker's, but until you produce Sol Frank and Hirschowitz and others, I will exclude them. I am taking these sheets simply as indicating Wacker's.

Mr. Goetz: You are taking them subject to connection?

The Master: I am taking them subject to connection. Now, it may be that when Judge Ransom comes back and you men confer, that you may permit them to offer the balance without calling witnesses, because I am frank to say on the record as I have already said off the record, that I think this defense has blown as high as the sky almost by the proof offered, and indicates that generally speaking month after month with some very few exceptions, the average was over 22.

1627 Mr. Neumann: Has your Honor looked at it from this view, that these sheets would indicate that the complainant supplied more than was required by the statute, and therefore necessarily have increased their operating expenses for those years.

The Master: I did not discover any such defense as yet.

Mr. Cummings: In answer to the Master's statement I say that the reports will show that in 1914 there was—

Mr. Goetz: They are not in evidence.

The Master: Just wait a second; I did not get the exhibit number

Marked Defendants' Exhibits A-69.
for those sheets.

Mr. Neumann: Does your Honor hold this. You have excluded 1914. I have before me the sheet of Cazzaza which shows repeated violations in the month of February, 1914. Does your Honor rule

that even though Mr. Cazzaza were here you would not permit that sheet in evidence?

The Master: I would not take Cazzaza's testimony or a sheet of so remote a date.

Mr. Neumann: As of 1914?

The Master: Yes.

Mr. Neumann: Exception.

Mr. Tobin: The reason we ask that is that he is out of the State.

The Master: I would not take any proof back of 1914, in the exercise of my discretion.

Mr. Neumann: Your Honor has looked at February, 1914.

The Master: I have excluded that.

1628 Mr. Neumann: Have you looked at it?

The Master: I do not care about it. I have excluded everything prior to 1916, because I think the matter is sufficiently presented by the proof of the period between January 1, 1916, and February, 1920.

Mr. Cummings: I want to show that the reports made for 1916 show 145 violations.

The Master: During the whole year?

Mr. Cummings: Yes; the average for the year is 21.75. For 1917, there are 132 violations; the average for the year is 21.68. For 1918, there are 130 violations and the average is 21.48.

Mr. Neumann: You take January, 1918, they get down as low as 12 candle power, and there are 26 violations in that month.

Mr. Cummings: In 1919 there were 94 violations; the average for the year was 22.54. They did very well on the average for the year at that time.

The Master: How about 1919?

Mr. Cummings: That is what I am giving you.

The Master: What was 1918?

Mr. Cummings: 130 violations; with an average of 21.48.

Mr. Vilas: My figures show 21.71.

The Master: What figures?

Mr. Vilas: The figures that were taken at the works.

The Master: What is it for the first five months in 1920?

Mr. Cummings: I do not believe we have that.

1629 By Mr. Tobin:

Q. Do you know the location of the testing station of the New York & Queens Gas Company?

A. Yes.

The Master: He said it was in the same building.

Q. And the gas tested by the city is the same gas as tested by the company?

A. Yes.

The Master: I think you better reserve cross-examination until they check up some of these things. There is no use of calling him back every few days.

Mr. Vilas: That is satisfactory.

The Master: Check up some of those sheets and be prepared to cross-examine.

By Mr. Vilas:

Q. Are these sheets in these packages that have been offered in evidence the originals?

A. Yes.

Q. They are in your handwriting in so far as you made them?

A. All that are signed by me.

Q. You made computations of them?

A. I have.

Mr. Vilas: Can we have possession of these for checking? It will take three or four days to check them up?

Mr. Neumann: All right, let them take those two packages.

The Master: I cannot take custody of them; I think you are perfectly safe in turning them over to the experts of the Consolidated Company.

Mr. Neumann: Let him pick out what he wants, 1918, 1919, or anything.

1630 Mr. Goetz: In the Consolidated case we were given possession of these.

Mr. Neumann: The only thing is they are public records and the man is responsible for them. We want to look out for them.

The Master: The record will note that with the consent of Mr. Birdsley on the suggestion of the Master, there has been handed to Mr. H. W. Terry, the expert of the complainant company, the two packages of 1918 and 1919, the test sheets produced in court by Mr. Wacker, so that Mr. Terry can check them up, and let them be returned as he receives them without any notations on them.

Do you want to ask him anything else at this time?

Mr. Vilas: Not at this time.

Mr. Goetz: How about this Exhibit A-67?

The Witness: I can get along without them tonight.

Mr. Goetz: Until the morning?

The Witness: It simply means the longer you keep them the more inconvenience I have.

Mr. Goetz: You are not going to make any tests tonight?

The Witness: I do not think I will be able to tonight.

Mr. Neumann: I can cover this by a direction from the Master that you deliver these to the complainants so that they can have them overnight.

The Master: Can you finish with them tonight?

Mr. Terry: Yes.

The Master: I will direct the witness to deliver these tables 1631 to Mr. Terry, and I will direct Mr. Terry and counsel for the complainant that they must assume responsibility for having these back here tomorrow morning at 9:30.

The Witness: I was going to say that the Consolidated men have made a copy of my copy, so why can they not use their own copy?

The Master: That is what they want to do, to see that it is a copy.

Mr. Vilas: Are these already copied?

The Witness: Your engineer made a copy of those; Mr. Morrison took them down and made copies of those, so that really I do not see why there is any necessity for taking those.

Mr. Vilas: Those are out at Flushing and we cannot get at them tonight; you will have them the first thing in the morning.

WILLIAM R. BIRDSLEY recalled.

Direct examination.

By Mr. Tobin.

Q. Is the test conducted by the City a standard test?

Mr. Vilas: That is objected to.

The Master: Objection sustained. Is the test testified to by the witness Wacker, whose testimony you have heard, the standard test?

Mr. Vilas: We object to that.

The Master: That objection will be overruled.

Mr. Vilas: Exception.

1632 The Witness: The procedure Inspector Wacker follows, as he has testified to, is the standard recognized method of testing gas on that style and type of photometer.

The Master: That is not the question. I think perhaps you better qualify Mr. Birdsley a little bit as an expert. I may perhaps have fallen into error, because I knew he has been qualified in the Consolidated case, but you better bring out what Mr. Birdsley knows about testing gas, his qualifications and experience in testing gas.

Q. Mr. Birdsley, what is your experience as a gas tester?

The Master: You know what I want on this record; let us have it.

A. I have operated various types of photometers. There are not so very many types.

By the Master.

Q. What study have you made and what experience have you had?

A. I have had experience in the testing of gas on various types of photometers, using various standards, since 1903.

Q. In what connection?

A. In connection with the testing of gas, both in the city and outside of the city.

Q. For whom?

A. Under the direction of Dr. E. G. Love, who was at that time Chief Gas Examiner for the City.

Q. For public authorities, or individuals, or private parties?

A. For public authorities and private individuals. I acted as

Dr. Love's assistant in the work until 1906, when I was appointed.

1633 Q. Have you made any study of the different kinds of apparatus that are used for gas testing, and the different methods?

A. Oh, yes, I have made that study.

Q. Where did you get that information?

A. I got that from various textbooks and from using the apparatus.

Mr. Tobin: Yourself?

The Witness: Myself.

Q. Is there more than one kind of recognized method of testing gas?

A. The method is practically the same, that is judging the intensity of light on the basis of the inverse squares. The apparatus does vary. The Sugg-Letheby Photometer, which has been described already, is a standard photometer and is used in nearly all cases for the testing of gas. There are other types of photometers, one that I know of at the present time being the Sharpe-Miller Photometer or luminometer. That has an electric standard and is used to determine the candlepower feet for the illumination in various parts of the room. I would not call that a standard apparatus for testing gas. There are also electric photometers which are used for laboratory work only, but to go back to the Sugg-Letheby, that is really the only standard photometer used in the testing of gas, both in laboratories and in the works.

Q. And the method of using it is the method described by Mr. Wacker?

A. It is.

By Mr. Tobin:

Q. You are familiar with the provisions of the——

The Master: Do not get into that, I am not going to let him testify that it complies with the statute. I will let you prove
1634 it is the standard method and this is the way to handle that machine. I cannot let you have anything else.

By the Master:

Q. The accuracy of the report made depends entirely upon the accuracy of vision of the observer, does it not, Mr. Birdsley?

A. Yes, and in addition, of course, the accuracy of the——

Q. Of the computation?

A. Of the computation and the various pieces of apparatus which are a part of the photometer itself.

Q. It likewise depends upon the candles?

A. The candles, of course, may vary. It is left to the judgment of the observer to determine whether those candles are burning properly. There are certain fixed rules pertaining to the way a candle should burn before it should be used, and the inspectors are in-

structed that they observe these precautions and observe the condition of the candle burning before they make the test, and no test should be made before those conditions have been observed.

Q. Inspectors are merely human, are they not?

Mr. Cummings: Why, surely, everybody is apt to make mistakes, if that is what the Master is trying to get at.

The Master: No, what I am trying to get at is that there is no fixed and sure and certain standard of measurement.

Mr. Cummings: There is no machine, if that is what you mean.

The Master: When you get a number of averages of months would show pretty well it does not indicate fraud.

1635 Mr. Cummings: No, we are not claiming that.

The Master: Well, that is the whole theory of your defense—fraud.

Mr. Cummings: Why, absolutely not.

The Master: It must be.

Mr. Vilas: It says wilfully and wantonly and purposely failed to comply with the standard.

The Master: It must be, naturally. Failure to show the required standard is not enough in equity to throw this company out of court.

Mr. Cummings: Not a few isolated cases would not be, perhaps, no.

The Master: No, and proof that they manufactured a standard of gas in their works that generally and ordinarily would show up at the testing station at 22 or better, taken in connection with the actual result, must be taken as bearing heavily against any claim of a deliberate intent or a practice of failure to comply with the statute.

Mr. Cummings: What would you say if you had 145 violations a year?

The Master: That means nothing to me.

Mr. Cummings: Is that intentional?

The Master: No.

Mr. Cummings: That is accidental?

The Master: That means nothing to me, because a great many of those 140 odd violations may be fractions of one per cent, which would be included, and it would likewise be so close in most instances as perhaps to be explained by the variance in the observation or the accuracy of vision or by some other thing. Yes.

1636 will not get any court to throw this complainant company out of court, seeking equitable relief, unless your proof tends to show a deliberate violation of the statute—practically a fraud on the public.

Mr. Cummings: I think one in three, violating the statute one third of the time, shows that.

The Master: Not at all. Let me have those sheets.

Mr. Cummings: I am reading from the annual violations, the number of daily violations during the year.

The Master: No, I am just turning at random to a month here. Now, this is a pretty bad month in September, 1916.

Mr. Cummings: Then read it.

The Master: Take 21.68 as the first item there. That is one that is included in a large number. You had 140 in what year?

Mr. Cummings: 145 in 1916.

Mr. Neumann: How about September 2nd, 1906. Take September 11th, 17.83.

The Master: No, this is what I want to bring out. Take, for instance, the month of November, 1916, among those that will necessarily be included as violations is the 2nd of November, 21.70, pretty close to 22. 21.78, very close to it. 21.50 and 21.48. There are some that are further away, but you have included a great number that are very close to it. 21.61 in January, 1917.

Mr. Neumann: Well, you take September, 1916, which is practically a summer month, 17.83, that shows up pretty bad. There are 21 violations on that.

1637 The Master: I have indicated my views clearly on that. I will not find fraud.

Mr. Vilas: The answer says continuously, persistently, knowingly and wilfully.

The Master: I will not find that they continuously, persistently, knowingly and wilfully did it.

Mr. Neumann: To which we respectfully except.

By Mr. Tobin:

Q. Mr. Birdsley, you found Mr. Wacker a careful man?

Mr. Vilas: I object to that.

The Master: Sustained. I will assume that Mr. Wacker was not alone careful but intelligent and conscientious, and yet I shall take notice of the fact that he is an ordinary human being.

Cross-examination.

By Mr. Vilas:

Q. Mr. Birdsley, in any of the tests of gas are corrections made for temperature?

A. Yes.

Q. Temperature of the gas?

A. Temperature of the gas, yes.

Q. Is any account taken of the temperature of the room?

A. No, we use no correction. That is, the city does not use any correction for room temperature. That is, as I understand it you mean the effect which room temperature may have on the stem of the thermometer, extending outside of the meter.

Q. No, I asked you if they took into account the temperature of the room at all?

1638 Mr. Neumann: The witness has asked you what you meant.

A. "Took into account" is very indefinite.

Mr. Neumann: The witness has asked you what you meant.

The Master: The witness Wacker did not testify to any computa-

tion, and so far as I know he was not expected to make any computation based on the temperature of the room.

The Witness: No.

Q And you do not keep a record of the temperature of the room aside from the record of the temperature of the gas?

A No.

Mr. Neumann: That is objected to—all right, he has answered.

Mr. Cummings: It does not matter anyway, Mr. Wacker would not work in the cold.

Mr. Vilas: I am asking Mr. Birdsley general questions now.

Q There are many factors in connection with this photometer that you speak of that have to be taken into account in arriving at an accurate test of the candle power of the gas, are there not?

Mr. Neumann: Objected to on the ground it is vague, meaningless and indefinite.

The Master: Overruled.

Mr. Neumann: Exception.

A If I could just hear that question?

Q I will amplify that. For instance, what is the first portion of the instrument that the gas comes in contact with when it goes into the photometer?

A The dry governor.

1639 Q And from here where does it pass?

A From the dry governor it goes to the meter.

Q And how large a meter is it; what is the capacity of the meter?

A It is what they call a one foot meter, as we understand it.

Q Is it customary in your department to test those meters?

A Oh, yes.

Q At regular intervals?

A Yes.

Q How frequently?

A I do not know exactly how long ago that meter was tested down there. It was tested by the American Meter Company, I believe, about a year ago. I am not positive as to that.

Q If the meter does not register accurately that will affect the accuracy of the test, will it not?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, based on an hypothesis and a supposition.

The Master: Overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

The Master: If the meter is out of order the result would be inaccurate?

The Witness: If the meter is out of order the result would certainly be inaccurate.

Mr. Neumann: And if the meter is in order it would be accurate, would it not?

The Master: Do not answer that.

Q The same is true of a dry governor, is it not?

A. Beg pardon?

Mr. Neumann: Same objection to that.

The Master: Objection overruled.

1640 Mr. Neumann: Exception.

The Master: Mr. Vilas is trying to bring out, in order to get an accurate result your instrument has got to be in perfect order. I suppose that is so, Mr. Birdsley?

The Witness: That is true.

Mr. Neumann: And if it is accurate, then he gets an accurate result.

The Master: And it is in accordance with his testimony when Mr. Birdsley says this machine is the proper machine and the way Wacker tested it is the proper way to test gas. Mr. Vilas is properly bringing out that not alone does the test depend on the accuracy and vision of the observer, but in addition thereto it depends very largely upon the accuracy of the machine itself. Unless the machine is examined from time to time to see that it is in proper accurate working shape the result is not dependable.

Mr. Neumann: Did not the Master bring out all those questions?

The Master: Isn't that so?

The Witness: The machine must certainly work properly in order to get accurate results.

Mr. Neumann: Why not ask him the converse of the proposition?

The Master: Because it speaks for itself. What is the use?

Mr. Vilas: What are you afraid of; the witness is right?

Mr. Neumann: I am not afraid of him at all.

1641 Q Where do you obtain your supply of candles?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial.

The Master: Overruled.

Mr. Neumann: Exception.

A. From the American Meter Company.

Q. Have you had a uniform quality of candles during the last four years, say from 1916 on?

Mr. Neumann: It is objected to on the ground it is incompetent, irrelevant and immaterial.

The Master: Overruled.

Mr. Neumann: Exception.

A. The candles in some cases were not satisfactory. When they were not satisfactory they were rejected.

Q. That does not answer my question.

Mr. Neumann: I submit that it does. It may not be the answer you wanted, but it answers your question.

The Master. The witness has stated that they have not always been satisfactory. What has been the trouble with them?

The Witness. The candles did not burn within the limits, the prescribed limits as recognized by the method of testing, and when the inspectors found the candles burning that way, they simply discarded them, and as many as burned that way were discarded and the tests discarded also.

Q. What is the prescribed limit; what do you mean by the prescribed limit of burning the candle?

1642 A. It is assumed that a candle would not burn between, say $91\frac{1}{2}$ minutes and $101\frac{1}{2}$ minutes.

The Master. It will burn properly.

The Witness. It would burn properly, I mean. It would not burn properly outside of those limits, I should say.

Q. That is, between $91\frac{1}{2}$ minutes and $101\frac{1}{2}$ minutes you would accept candles as correct?

A. Providing the candle was burning properly. There are also other conditions to observe.

Q. What other conditions, describe them to us?

A. The point of the wick must be bright red and have a curvature, and the cup must be fairly dry and not too much sperm floating around inside the cup. Of course, that is known to be the proper way the candle should burn, and the inspector is instructed to use such precautions.

Q. By the cup you mean the top of the candle, around the wick?

A. Around the wick, yes, sir.

Q. Right below the flame?

A. Yes, sir.

Q. Do you mean to be understood as saying there are no tests accepted where the candle burns less than $91\frac{1}{2}$ minutes or more than $101\frac{1}{2}$?

Mr. Neumann. Objected to on the ground it is incompetent, irrelevant and immaterial, fully covered, the witness' answers speak for themselves.

The Master. Overruled.

Mr. Neumann. Exception.

A. The inspector, of course, as I said before, uses his judgment. Within those limits a candle may not burn properly and they will be thrown out.

1643 Q. You mean in other respects; it may not burn properly in other particulars?

A. In other particulars.

Q. I am speaking now of the time.

A. Between $91\frac{1}{2}$ minutes and $101\frac{1}{2}$ minutes.

Q. Is that a rule of your department?

A. No, it is not a rule. I would have no compunction about re-

receiving a test, say, that burned 9.45, if I was making a test and was satisfied with the condition of burning of the candles.

The Master: How about beyond 9.45?

The Witness: I would also take a test that burned 10.55, if in my estimation the candles were burning properly. I would use my own judgment in that case.

Q. In other words, the inspector uses his judgment as to the time, governed by the other conditions of combustion?

A. By the other conditions.

By the Master:

Q. I think you better explain on the record what you mean by $9\frac{1}{2}$ and $10\frac{1}{2}$ minutes. What do you mean by that, that it shall burn a certain amount of grains or what?

A. That is in using two candles in the test we would burn 40 grains of sperm in 10 minutes, if the candles were burning according to the standard prescribed.

Q. For each candle?

A. 20 grains for each candle, 40 grains for the two candles in 10 minutes.

Q. That is what I wanted to make clear on the record. When you are talking about $9\frac{1}{2}$ to $10\frac{1}{2}$ minutes what you mean is that if the candles burn at the rate of 20 sperm—is that what you call them?

A. 20 grains of sperm.

Q. 20 grains of sperm, in approximately 10 minutes, you would say the candle was burning properly?

A. Burning to standard.

By Mr. Vilas:

Q. That would be 120 grains per hour?

A. 120 grains per hour per candle.

Q. You do not use a single candle in your tests?

A. No, we use two candles.

Q. And you obtain those by cutting candles in two, do you not?

A. Yes, a long candle is cut in half.

The Master: Always?

The Witness: Always.

Q. Is that done by the inspector?

A. That is done by the inspector.

Q. Each one cuts his own candles?

A. Yes, sir.

Q. And after the candle is cut it has to be shaped, does it not?

A. Part of the sperm—the candle is burned from the centre to the ends. The candle is cut in half and the sperm pared away from the centre, which was the centre in each case, and now becomes the upper end of each candle, and the bottom and the top then become the bottoms of the candles.

Mr. Neumann: That is for the purpose of exposing the wick, is it not?

1645 The Witness: That is for the purpose of exposing it, giving it a wick. It must have a wick.

Q. And the bottoms are fitted to a receptacle, are they not?

A. The top, what was the top of one part of the candle, is then pared off to make it the bottom of the candle.

Q. How long is a single pair of candles in use, ordinarily?

A. Depending on the number of tests. I should say that where several tests are made one after the other, you can get about four tests out of one candle cut in half.

Q. That is four 10 minute tests?

A. Four 10 minute tests. Yes, sir, running fairly close together say about fifteen or twenty minutes apart.

Q. The quality of the wick in the candle has a great deal to do with its efficiency as a standard, has it not?

A. Yes, of course, the condition of the flame will be dependent upon the condition of the wick and, of course, that is all left to the judgment of the inspector also.

Q. There is considerable difficulty at times in the quality of the wicks, is there not?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial.

The Master: Overruled.

Mr. Neumann: Exception.

A. There is not so much weight placed on the quality of the wick, it is the condition of the flame which is giving off the light.

1646 Of course, the wick may be one of the factors which will cause this irregularity or this unsatisfactory condition of the flame.

Q. Where did you get your supply of candles during 1919?

A. From the American Meter Company.

Q. And where do they come from?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, and may not be within the province of this witness to testify.

The Master: Overruled.

Mr. Neumann: Exception.

A. I understand they come from England.

Mr. Neumann: I move to strike the answer out.

The Master: Motion denied.

Mr. Neumann: Exception.

Q. Was the supply of candles during the war of the same quality that you had before the war?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, does not show anything as to dates, the term of war may be indefinite.

The Master: Overruled.

Mr. Neumann: Exception.

A. I am not sure if my memory serves me right in this: During the year 1918 I remember we had a little difficulty in getting deliveries, but we had sufficient candles to carry on the testing, and I do not believe that the candles were any worse than we had before, or that we had any more trouble with them.

Q. Is it not a fact that you had considerable difficulty in getting candles from England during 1916 and 1917?

1647 Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial and already covered.

The Master: Overruled.

Mr. Neumann: Exception.

A. We did not get our candles from England, we got them from the American Meter Company, and the deliveries made by the American Meter Company were sufficient to keep us in supply, and we were able to make our tests.

Q. Do you know whether the candles were represented by the American Meter Company to be English make or American make?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial.

The Master: Overruled.

Mr. Neumann: Exception.

A. They were represented to be English make and were so stamped on the box.

Q. You said, I believe, there were other types of photometers than the one you have described. Do you say yes?

A. Yes, I understand that.

Q. Where have you seen other types?

A. Why, up in the Standard Testing Laboratory they have several types.

Q. What do you refer to when you speak of the Standard Testing Laboratory; in New York?

A. In New York, yes.

Q. A Government laboratory?

A. No, I believe it is a private concern that does the Standard testing for various concerns. They test electric lamps. I believe they call it the Standard Testing Laboratory.

1648 Q. What other types of candlepower testing apparatus do you know of that are in use?

Mr. Neumann: That is objected to on the ground it is incompetent, irrelevant and immaterial. We sought to bring out the same proof and the Master excluded it.

The Master: Overruled.

Mr. Neumann: Exception.

A. There is what they call the Spherical Photometer. It is a large sphere and the light under observation is inside of that sphere. Then there is a photometer which the United States Bureau of Standards use, an electric photometer with an electric standard.

Q. Have you ever made tests with any of these other types of photometers?

A. I have made tests with the Sharpe-Miller Photometer.

Q. What type is that, the one you have just described, the spherical one?

A. No, that is a luminometer for getting the candlepower in various parts of the room, or taking the direct candlepower observations.

Q. It is a fact, is it not, that these other types that you have described are in use throughout the country and in various places for testing gas?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial. Here is a statute that provides the method whereby the test should be made. This witness has testified he makes the tests in accordance with that statute.

The Master: I am not so sure that you comply with the statute.

1649 Mr. Neumann: What they do in other parts of the country is immaterial to this issue.

The Master: I will overrule the objection.

Mr. Neumann: Exception.

Mr. Cummings: I object to it unless it is in general use.

The Master: Overruled.

Mr. Cummings: Exception.

A. No, these types are not used for the testing of gas in a general way.

Q. Well, they are used, are they not, you do not mean to say they are never used, not used any place in this country?

A. No, I said not generally used.

Q. What is the difference between this luminometer as you call it and the photometer that you use here?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial.

The Master: Overruled.

Mr. Neumann: Exception.

A. It is quite a small affair, it is a little box with a graduated scale inside. There is a disc, which is a prism, and the Standard is a very small electric light which is controlled by means of a rheostat and small storage batteries. The photometer itself is all right for making tests, as I say, in a room to determine the candle feet at any given point, but it must be continually standardized against some other standard. So in my mind an electric standard is not suitable, because there is never any assurance that the bulb itself is not deteriorating, and also there is no correction

1650 made for aqueous vapor.

Q. Let me ask you this question, Mr. Birdsley. You have stated that the time of burning may be from 91½ to 104 minutes, I believe?

A. Yes, sir.

Q. What difference in candle power reading would be brought about by that much variation in the burning of the candle, that is, the variation of a minute?

A. I do not quite understand that question.

Q. I will put it another way. If you take a test with a candle that burns $9\frac{1}{2}$ and then you take a test of the very same gas that burns $10\frac{1}{2}$, will you get a different result with the candle power that burns $10\frac{1}{2}$?

Mr. Neumann: How can you? One candle is burned out.

Mr. Vilas: Do not try to confuse him; he knows what I mean.

A. There will be a different result, yes.

Q. You will get a different result?

A. If the light under observation is the same.

Q. Assuming the light under observation is the same, and made first with a candle burning $10\frac{1}{2}$ and then with a candle burning $9\frac{1}{2}$, what percentage of difference will that make?

Mr. Neumann: That is objected to on the ground it is incompetent, irrelevant and immaterial. It must be based on hypothesis and guess.

A. I would have to figure that out. I would have to know what the standard is first, what the light under observation and the power of it must be.

1651 Mr. Neumann: There are a lot of facts you have to put in your question before the witness could answer it.

The Witness: Give me a specific candle power and I will figure it out.

Q. Suppose you had a 22 candle power gas and a $9\frac{1}{2}$ minute candle, and then tested the same gas with a candle burning $10\frac{1}{2}$?

A. It will take only a short time, but if I had those logarithmic tables I could figure it out in a second.

Q. All right, there they are (handing witness).

Mr. Neumann: Before the witness answers the question I want to add to my objection, that the question as framed is manifestly unfair, and will not bring out the facts in a fair way. Does the Master rule on that objection?

The Master: Objection overruled.

Mr. Neumann: Exception.

A. If the candle burning at the rate of 9.52 indicated a candlepower of 22, then if the candles burned at the rate of 10.50 the candlepower would be 24.15. I did not carry it out very far as to decimals.

Mr. Neumann: May I ask this, so that the record may be straight? Did counsel intend to mean the observed candlepower or the corrected candlepower? Because that makes some difference.

Q. You gave us the corrected candlepower, didn't you?

A. No, I took it just as you gave it to me.

Mr. Neumann: What was it based on? I want to ask counsel what his question was based on, the corrected or the observed candlepower?

1652 Mr. Vilas: I take the witness's answer.

The Witness: I estimate that the 22-candlepower was corrected at 9.52.

Mr. Neumann: And not on the observed candlepower?

Q. Now, take the reverse of that, Mr. Birdsley, suppose that the 10.50 candle provides a corrected reading of 22 candlepower, under the same circumstances what would have been the reading if the candles had burned at 9.50?

A. That would have been higher—or at least it would have been lower.

Q. Just tell us how much lower?

A. Assuming that the 22 candlepower was corrected for everything else, and the time of consumption of sperm was 10.50, the candlepower at the rate of 9.52 at the time of burning would be 19.89.

The Master: In other words it makes a very substantial difference, doesn't it?

The Witness: Oh, yes.

Q. And if you have candles burning at the rate of 9.50, that means 114 grains of sperm per hour, does it not?

A. Yes.

Q. And 10.50 would make 126 grains per hour, is that right?

Mr. Neumann: One moment. I think that was a mis-statement of the figures.

Mr. Vilas: He will correct me if my arithmetic is poor.

Mr. Neumann: Isn't 9.50 126, and 10.50 114?

1653 The Witness: Yes, it is just the reverse. It is not exactly

114. 10.50 is 114.3.

Mr. Neumann: And what is 9.50?

The Witness: It is about 126 even.

Mr. Neumann: Do you admit you were wrong?

Mr. Vilas: I just reversed it.

The Master: He doesn't have to admit it. The fact is apparent that the faster the candle burns the more sperm is burned.

Mr. Vilas: That is all.

Redirect examination.

By Mr. Tobin:

Q. If you find that the candles are burning faster than the rate of 9.50 the usual method is to take a new test, is it not?

Mr. Vilas: I object to that. He has not testified to that.

has testified that those are the limits within which they accepted tests.

Mr. Tobin: I am asking him if it burns faster than 9.50 whether the usual practice is to make another test.

The Master: I will sustain the objection. I will ask the witness if he accepted tests which showed the candle burning faster than 9.50.

The Witness: We have accepted probably 9.45, yes. As I say, it is understood that the inspector would not turn in a test like that unless he was perfectly satisfied that the candles were burning fairly well.

Q. Do you deem the photometer method as used by the City in the testing of gas as being as accurate as the luminometer method that you testified to?

Mr. Vilas: I object to that as incompetent.

The Master: I am going to let the witness state what I understand he will say, that he thinks it is better. What is the use of wasting time? Hasn't he said that he didn't think much of the luminometer because it had an electric bulb, and that was apt to vary, and he indicated that is what he thought. Haven't I understood your statement correctly, Mr. Birdsley?

The Witness: That is so.

Mr. Tobin: That is all.

(Witness excused.)

Adjourned to Tuesday, June 8, 1920, at 9:30 a. m.

Last Complainant's Exhibit No. 104.

Last Defendants' Exhibit A-69.

NEW YORK & QUEENS GAS COMPANY

VS.

CHARLES D. NEWTON, &C., et al.

Before Abraham S. Gilbert, Special Master.

New York, June 8, 1920.

Met pursuant to adjournment.

Present:

Mr. Ransom, Mr. Vilas and Mr. Goetz, of Counsel for Complainant.

Mr. Chambers, Mr. Tobin and Mr. Cummings, of Counsel for Defendant Newton.

Mr. Neuman, of Counsel for Defendant Lewis Nixon, Public Service Commissioner.

Mr. Chambers: I would like to call the Master's attention to the

situation which confronts the defendants in regard to being entirely ready to close up the case.

Mr. Hine has been working faithfully and diligently for a long time in appraising this property, and has had with him at least two engineers, I think three, so we put just as many engineers on the job as the thing would stand.

He tells me that he will not be ready to testify until the 16th day of June, and then he will be all ready. He and Mr. Maltbie will be the only two witnesses we have left after we get through here, and Mr. Maltbie will be ready at the same time. He is in the same situation as Mr. Hine, that is, he gets his information from the accountants of the Public Service Commission. They have been working constantly on the matter and there has been no delay on our part.

1656 Mr. Neumann: Your Honor knows the situation with reference to the four tables that was outlined to you yesterday on the record and by Mr. Cohen: We will not be ready with those tables until the latter part of this week, and that will complete all of our tables.

The Master: What I cannot understand is this, why your Accounting Department should spend weeks and months preparing tables that are in evidence in other forms. What earthly use was there in having your men spend the time they did to show me what they have. It is utterly ridiculous and a waste of time.

Call your witness now and let us get through with what we have here today.

Mr. Vilas: I know from having been out there before the snow was off the ground that the engineers were there then.

The Master: Let us go ahead with your next witness.

FREDERICK A. DEDE, called as a witness on behalf of the defendants, being duly sworn, testified as follows.

Direct examination.

By Mr. Cummings:

Q. Where do you reside, Mr. Dede?

A. Forest Hills, Long Island.

Q. What is your business?

A. Deputy Tax Commissioner.

Q. For the City?

A. Yes, sir.

Q. How long have you been a Deputy Tax Commissioner?

1657 A. About fifteen years.

Q. What were you prior to that, what business were you engaged in?

A. For five years immediately before that I was a clerk in same department. Before that I was in the real estate business.

Q. Do you hold your present position as Deputy Tax Commissioner as a result of some competitive examination?

A. I do.

Q. And you were appointed, were you, from an eligible list?

A. Yes, sir.

Q. After such examination was conducted?

A. Yes, sir.

Q. Were you assigned to the district in which is included the land owned by the New York & Queens Gas Company?

A. Only for the year 1916.

Q. Just that one year, 1916?

A. Yes, sir.

Q. Will you describe your duties as Deputy Tax Commissioner?

A. Appraising all real property for the purpose of taxation for the City of New York within the particular district to which we happen to be assigned for that year.

Q. For the year 1916 that was?

A. Yes, sir.

Q. After 1916, I assume that you were assigned to some other district?

A. I was sent to another district, yes sir.

The Master: You assessed it for the year 1916?

The Witness: Yes, sir.

1658 The Master: You looked at it in 1915 for 1916?

The Witness: In October, 1915.

The Master: For the year 1916?

The Witness: Yes, sir.

Mr. Neumann: That is the usual time?

The Witness: I made a mistake in saying October. The time was changed shortly before that. That particular year I think the assessing was done in the spring as of October 1st.

Q. You start your work about April?

A. Yes, sir.

Q. And make a report in October?

A. Yes, sir.

Q. And is that a sworn report?

A. Yes, sir.

Q. And in that report you make a sworn statement, do you, of all the taxable property in your district, with the values placed on such property?

A. Yes, sir.

Q. Is the sum that is set down in such report a sum which in your judgment each separate parcel of real estate under ordinary circumstances would sell for if wholly unimproved?

A. Yes, sir.

Q. Do you also set down the value for the property as improved?

A. Yes, sir.

Q. Will you state the value that you placed upon the land of this company, unimproved?

Mr. Vilas: I object to that. In the first place——

1659 The Master: Objection sustained. I don't care what valuation he placed on it. I will take his testimony as to what, in his opinion it was worth.

Mr. Vilas: I object to that, first, on the ground that the witness is not qualified, and I ask an opportunity to examine him as to his qualifications.

Second, that the testimony is not binding upon this complainant, is not competent as against this complainant, and is not answering any testimony offered by the complainant. The complainant has not relied in any way upon this kind of testimony. Complainant has offered no proof of any valuation of this property as of 1916. The time fixed is too remote to have any bearing or relevancy on the issue in this case.

The Master: What bearing has that on this case, values prior to this time, 1919 and 1920?

Mr. Cummings: We are going to cover the period from 1904. We take the position that you should consider all the facts for a period of ten or fifteen years.

The Master: What has the value of property got to do with it, as to what it was valued at?

Mr. Cummings: If you can tell me this, whether appreciation in value of real property should be used as an offset against depreciation, I will answer your question.

The Master: What is that?

Mr. Cummings: If you can say that appreciation in real property should not be offset as against depreciation if you can answer that, then I can tell whether this is pertinent or not. What we want to show are the valuations from 1904 on down.

1660 Mr. Vilas: He is trying to take away the appreciated value of our real estate.

The Master: I am going to try to do it, too, if I can.

Mr. Cummings: How will you know the appreciation?

The Master: I asked Halleran about the value prior to the war. I will overrule the objection. I will take your opinion as to what this land was worth under ordinary circumstances.

Mr. Vilas: Exception.

The Master: What lot are you talking about?

Q. Describe the property?

Mr. Vilas: I still urge my objections to the witness' qualifications.

The Master: Objection overruled.

Mr. Vilas: Exception. It appears that this man was there one year and it does not appear that he had any knowledge of real estate in that locality at all.

Mr. Cummings: You can cross-examine him as to all those things.

Mr. Vilas: I am asking leave to do so.

The Master: You don't have to have leave after his testimony is in. Then you can cross-examine him to your heart's content.

What lots are you talking about, Mr. Dede?

The Witness: The property known as Block 170, Lot No. 31. The original piece, that is the piece with the bulk of the plant on it has a frontage of 332 feet on Myrtle Avenue, running through—

The Master: You are reading from the tax map?

1661 The Witness: Yes, sir. Running through on Byrd's Alley a distance of 300 feet to 31st Street. Then on 31st Street a

distance of 280 feet to Farrington Street; then south on Farrington Street, at that time——

The Master: Back to Myrtle Avenue?

The Witness: No, it did not, because some of these properties were acquired later, and it almost takes a lawyer to make out when these things happened. It ran back along Myrtle Avenue 75 feet.

The Master: Isn't this the situation, Mr. Dede, that the property that you appraised was on Myrtle Avenue, fronted Myrtle Avenue from Byrd's Alley to Farrington Street?

The Witness: Yes, sir.

The Master: And it ran up Farrington Street to this Center Drive or 31st Street, as it is now called, with the exception of a plot 50 by 135 feet, beginning 75 feet from the corner of 31st Street or Center Drive?

The Witness: Yes, sir.

The Master: Otherwise the block fronting on 31st Street to Byrd's Alley and back on Byrd's Alley to Myrtle Avenue?

The Witness: Yes, sir.

The Master: What in your opinion was that worth when you looked at it in October, 1915?

The Witness: \$10,500.

The Master: Did you appraise this other lot in here, this 50 foot piece?

The Witness: Yes, sir.

The Master: What in your opinion was the value of that?

The Witness: \$700.

The Master: Did you appraise some other property over here somewhere?

1062 The Witness: Yes, sir.

The Master: What lot was that?

The Witness: Block 171, Lot 40, 125 by 100.

Mr. Vilas: This is all over my objection.

The Master: Yes. What is this lot we are talking about on the other side of the street, Block 171, Lot 40?

The Witness: Yes, sir.

The Master: You said that was worth how much?

The Witness: \$1,000.

The Master: You gave me 50 by 125 here as worth \$700.

The Witness: That is a different condition, that runs down into the Meadows.

The Master: So Block 171, Lot 40, you figure at \$1,000?

The Witness: Yes, sir.

The Master: Block 171, Lot 39, you figure at \$700?

The Witness: Yes, sir.

The Master: And Block 170, Lot 31, you figure at \$10,500?

The Witness: Yes, sir.

The Master: What experience have you had in Queens County, around that section?

The Witness: Experience in the Tax Department for some twenty-odd years.

The Master: Over in Queens?

The Witness: Yes, right in that same locality, subsequent to about eight years in buying and selling real estate myself.

The Master: Go on, next question.

Q. You also placed a valuation upon the property as improved, did you not?

A. Yes, sir.

1663 The Master: What do you mean, as improved, Mr. Dede, what kind of improvement?

The Witness: We have to assess whatever physical improvements may be on the land, what we consider its true value.

The Master: What was there, describe it?

The Witness: There were a number of buildings, some of them good, some of them indifferent, some of them bad, together with two tanks and a boiler house.

The Master: Did you ever build a tank?

The Witness: No, sir.

The Master: You don't know anything about the cost of tanks?

The Witness: At that time from the knowledge the Department could get—

The Master: You got some figures from the Department as to what the unit value on tanks was, is that the idea?

The Witness: Yes, sir.

The Master: You did not exercise any judgment of your own?

The Witness: I might say we all got that factor from an investigation of what tanks cost.

The Master: But the Department calculated that, didn't it?

The Witness: As a department.

Mr. Neumann: They got the best information they could.

The Master: Yes, we had that out in the Consolidated case, and I understand it perfectly. As to tanks, the Department fixed a schedule, worked out a schedule as to what gas tanks were worth?

1664 The Witness: Yes, sir.

The Master: And you men adopted that?

The Witness: Yes.

The Master: You didn't go to the tank and examine the inside of it and the outside of it; you saw a gas holder, and you took the department basis?

The Witness: We took the standard basis.

The Master: You also have a standard basis for certain characters of buildings, don't you?

The Witness: Yes, sir.

The Master: And when you went there and saw a two-story brick building, or a brick building three stories high, you took the factor for that?

The Witness: Except that we were not bound by that particular factor, we did not in all cases use it, and did not have to use it. The adaptability and location of a building decided us whether we will use the department's arbitrary factor or not.

The Master: Generally speaking, that was the basis of your calculation, was it not?

Mr. Neuman: I must object to that characterization of the Master of this witness' testimony. That is not what he has said, the record speaks for itself.

The Master: As I understand it, they have worked out factors for all characters of buildings. Mr. Dede, what you do is to go to this place and look at it and say that comes pretty close to the basis.

Mr. Cummings: He uses some judgment.

The Master: But the judgment starts with the factor. He goes there and says that the department factor generally fits this class of building, \$1.25 a cubic foot, or whatever it is, that there is no reason why he should change it, and he adopts that factor.

Mr. Neumann: If he does adopt it, but if he does not he uses his own judgment.

The Master: The difficulty with this appraisal of buildings and tanks and other things by Deputy Tax Commissioners is that the Department has tried to make a uniform basis throughout the City. It is a fair basis for taxing purposes, but as I said in the Consolidated case, we have got to take an entirely different rule in appraising independent pieces of property.

Just let me ask one thing more. Was any machinery or apparatus included in your appraisal?

The Witness: Yes, sir.

The Master: Where did you get those figures from?

The Witness: Why, it is so long ago it is hard for me to say.

The Master: Well, you never manufactured or brought or sold gas-making apparatus?

The Witness: No.

The Master: You must have gotten it somewhere else?

The Witness: We gathered the information, sometimes from the officers of the Gas Company, if we could get it, sometimes from outsiders, sometimes figured it on the basis of Departmental figures.

The Master: Can you tell us now how you got any figures for apparatus?

The Witness: Mostly from the Department.

1666 The Master: And buildings the same?

The Witness: Yes.

The Master: And holders the same?

The Witness: Yes, sir.

The Master: So, as I understand your testimony, as far as buildings, apparatus and gas holders were concerned, your best recollection is you took the Department figures?

Mr. Neumann: I object to that on the ground——

The Master: That is what he said.

Mr. Cummings: He did not.

Mr. Neumann: If your Honor please——

The Master: I am not going to have Mr. Dede say something he didn't say.

Mr. Dede, I don't want you to tell me anything that is not the fact; I am trying to get the fact on the record, and in spite of counsel butting in and interrupting, I am going to get what you tell me is the fact. Don't pay any attention to either counsel on either side. Now, what is your best collection as to your figures as to improvements, that is, buildings, apparatus and holders; are they the Department factors or not?

The Witness: In this case I must say it is.

Mr. Neumann: If the Court please, this is what I wanted to say before when you interrupted me, that the situation here evidently is analogous to a situation of three or four men. In this case it is a considerably larger number of men who get together and exercise their own judgment, and then agree upon a figure based upon all of their knowledge, their combined knowledge, as to what is a fair valuation. Now, the situation there is not any different than 1667 three or four men getting together and appraising a piece of property, and each man probably arriving at a different figure, and then the four men agreeing on what is a fair figure for the entire property.

The Master: We had this all out in the Consolidated case, and there is no use arguing it any more. Have you any other questions?

By Mr. Cummings:

Q. Mr. Dede, in these figures that are submitted to you from the Department, just called to your attention by the Master, do you or do you now use your own judgment, your independent judgment in addition to that? In other words, are you entirely bound by the figures as supplied to you by the Department?

Mr. Vilas: I object to that.

The Master: I will allow it. He says he is not bound by it.

A. No, sir, we are not bound.

The Master: Now, do you want to put the question as to what he thought the value of the property was, so I can rule on it?

Q. What, in your opinion, Mr. Dede, was the valuation of the property as improved, including the land and the improvements thereon?

Mr. Vilas: That is objected to.

The Master: Objection sustained.

Mr. Cummings: Exception.

The Master: I am not going to decide this case on expert opinion any more than I did in the Consolidated case.

Mr. Cummings: On the valuation of real property.

The Master: On any kind of valuation.

1668 Mr. Neumann: One of the grounds upon which we ask for a dismissal and for a report forthwith is on that very point.

The Master: I cannot dismiss this case. I have got to make a report. If there are facts I cannot find, why I will not find them.

Cross-examination.

By Mr. Vilas:

Q. Mr. Dede, how long were you in the real estate business?

A. About five or six years, I should say.

Q. And how old were you at that time?

A. Possibly started about 19 years of age, from 19 to 23 years.

Q. And after that did you go into the Tax Department?

A. Yes.

Q. Been in there ever since?

A. Yes.

Q. In what department of the City were you engaged in the real estate business?

A. In what department?

Q. What part, what district?

A. In Queens County.

Q. Do you live in Queens County?

A. Yes.

Q. You lived there all your life?

A. Not all my life, about 25 or 30 years.

Q. What ward do you live in; what part?

A. At that time the Second Ward.

Q. Where do you live now?

A. Still in the Second Ward, but 'way at the other end.

Q. Were you in business for yourself?

A. Yes.

Q. Buying and selling real estate?

A. Yes.

Q. What part of Queens did you operate in?

A. In the second Ward.

By the Master:

Q. Is that Flushing?

A. That was Newtown.

By Mr. Vilas:

Q. Did you ever buy or sell any real estate in Flushing?

A. I do not think I did.

The Master: How far is Newtown from Flushing?

The Witness: The distances are very great out there. You are going to get at about where I operated as compared to this. 'Way the other end of the Second Ward.

By Mr. Vilas:

Q. And a very different character of property from Flushing property?

A. To some extent, yes.

Q. When did you first have anything to do with the assessment of property in Flushing?

A. This year, 1915, for the tax of 1916.

Q. That is the first time you were ever assigned to that district?

A. Yes.

The Master: On what do you base your judgment?

The Witness: On whatever records we had in the field books, and the general knowledge of what happened in the sales, on mortgages that were being placed, and other factors.

Q. What was the source of your information about sales, mortgages, and so forth, that you speak of?

1670 A. Newspapers mostly, and the field books that were turned over to me by the previous assessor.

Q. That is, you took the information that you found in your predecessor's field books, is that right?

A. That is one of the factors, that, and whatever new sales happened while I was there.

Q. Will you tell us, Mr. Dede, what sales you had in mind when you fixed the valuation upon this property that you have testified about?

Mr. Cummings: He cannot remember that.

A. It is impossible for me to tell you that.

Q. Have you not your field book with you?

A. I have, yes.

Q. Does it not contain the sales?

A. This book is a book of lead pencil records and has been out of my possession for six years or more.

Q. Don't you know of any sales of real estate in the neighborhood of this property?

A. I do not recall any now.

Q. Do you recall at all whether you had any sales before you when you fixed the valuation?

A. Yes, surely.

Q. What mortgages did you take into consideration?

A. Whatever I happened to have on the field books that were turned over to me, and whatever new ones were made.

Q. Can you specify any single mortgage that you took into consideration?

A. No; there may be some here, but I would not tie myself down.

Q. Are there any memoranda there in your handwriting in that field book which you have before you now?

1671 Mr. Cummings: That book is not large enough to contain all that data you are asking about.

A. It is very hard to say; probably a lot of them rubbed out and new ones put in afterwards.

Q. Are you able to mention any lease on any property in that

neighborhood that you took into consideration in fixing this valuation?

A. No.

Q. Then you cannot tell us one single sale or one mortgage or one lease that was before you at the time you made this valuation?

Mr. Neumann: That is objected to on the ground that it is incompetent, immaterial and irrelevant; the record indicates that the witness has already said that the book was out of his possession for a number of years.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. I possibly could if I had time to look them up, but I did not know of this until last night after 5 o'clock, and this book came into my possession about ten minutes ago.

Q. Is that the book that you used in making this valuation?

A. Yes.

Q. But by looking at it now you are unable to tell us of a single sale, mortgage or lease?

A. If you will wait long enough for me to go through this I can find you some.

Q. We will wait.

The Master: No, we will not wait.

Mr. Vilas: I do not think we should be required to sacrifice many thousands of dollars of value because of a little time for the witness to qualify himself.

1672 Mr. Cummings: It is a physical impossibility to go back as far as 1904.

Mr. Vilas: He is giving us a 1916 valuation.

By the Master:

Q. Your field notes as to the particular sections of property are right about where your property is on the field book, is it?

A. Yes.

Q. Look right there and see if there is anything?

A. On Block 171, Lot 31, property assessed at \$1,700, has a mortgage of \$1,500 on it. Another property, Lot 36, assessed at \$1,000, has a mortgage of \$900 on it.

Q. Are you reading now from the memoranda in your own handwriting?

A. I do not know whether it is or not.

Mr. Neumann: You asked him for what he had in his field book.

A. (continued). Block 169, Lot 25, assessed \$1,300, mortgage \$1,000. Block 167, Lot 26, assessed at \$1,300, mortgage \$1,750—those things happen.

Mr. Cummings: Sure, that happens out there in Queens.

A. (continued). Lot 44 on the same block, assessed at \$1,900, there is a mortgage for \$1,500. I can go through this book and give you any number of them.

By Mr. Vilas:

Q. Do you know of your own knowledge of the location of these properties you have just described?

A. The description I gave, yes.

1673 Q. You do know where they are in that locality?

A. Yes.

Q. Are they in the vicinity of this property?

A. They were right around this property.

Q. What consideration did you give in arriving at your valuation of this property of the Gas Company to the mortgages that you have just described? What weight did you attach to the fact that a piece of property assessed at \$1,700 was mortgaged at \$1,500?

A. That taken alone I probably disregarded.

Q. You disregarded that?

A. Possibly. Sometimes it is possible that the descriptions so given in the public accounts are erroneous, and in this case this may have been an erroneous description. The only way you could locate it was by this lot, and it probably does not fit.

Q. Did you assume that or did you make any investigation of it?

A. We investigate when we have time; when we have not time we do not.

Q. So you are disposed to say now that you disregarded these three mortgages that you have described?

A. No. You asked me about one, the \$1,750 mortgage on the \$1,500 assessment.

Q. You told of one that was \$1,700 and had a \$1,500 mortgage. What weight did you attach to that on arriving at a valuation?

A. Probably investigated as to who made the mortgage, whether it was the Title Company or a bank, or whether it was a private owner.

By the Master:

Q. On the basis of the percentage of value, what would the mortgage be?

1674 A. In the case of a loaning institution it is generally around 60 per cent. These were improved properties mostly. At that time it was very difficult to get any mortgages on vacant land. I guess you could not in this particular neighborhood because the land was of such a character, no improvements, unless you had some friend that was willing to stake you, you could not get a mortgage. Of course, it depends a whole lot on what proportion of the true value you get. We try to run that down.

By Mr. Vilas:

Q. Now, prior to the time that you assessed this property, had you ever inspected it; had you ever seen the property of the New York & Queens Gas Company?

A. I had seen it; I have never inspected it.

Q. How many times have you seen it?

A. That is hard to say; I used to go to Flushing quite often.

Q. Did you ever make any inspection of it in forming an opinion?

A. Not for the purpose of forming an opinion as to value.

Q. When did you visit the property after 1915—

By the Master:

Q. How many lots were there in that \$10,500?

A. I think this map says twenty-three lots; I can give it to you quick.

Q. About \$500 a lot?

A. About \$500 a lot, yes; it did not average that. I can give you this very concisely. It was assessed at the rate of \$20 a front foot on Myrtle Avenue; \$16 a front foot on Center Street, and \$14 a foot on Farrington Street.

1675 Q. Is that the same as it was the year before?

A. It was the same over several years; no change.

By Mr. Vilas:

Q. Did you have the valuation of your predecessor before you when you made this assessment?

A. Surely.

Q. That was one of the factors that you took into consideration?

A. Sure.

Q. Did you allow anything for plottage?

A. No; not in this particular neighborhood.

Q. Did you allow anything for plottage on any assessments in that neighborhood?

A. Not in that year, no; not at that time.

Q. That was the only year you assessed this property, was it not?

A. Yes. The property at that time was easily obtainable and plottage did not affect its value.

By the Master:

Q. Have values over there fluctuated?

A. They have had their ups and downs, yes.

Q. 1916 was pretty low?

A. 1907, I think, was the beginning—that is the year of the panic. That is the time there was a drop in real estate up to almost the present time.

Q. So that, as I understand it, property over in that section reached a peak along about 1907, and from that time on there has been a sort of a blight on values over there, and beginning to pick up again?

A. Yes.

Q. In other words, 1916 was a pretty low ebb over there?

A. Yes.

1676 Q. Of course, your value is the value at which it would sell?

A. Yes.

Q. And in arriving at that value you have in mind, of course, the demand for real estate?

A. Absolutely.

Q. The fact that there was a very little demand for real estate?

A. Yes.

Q. I take it that your opinion as to what at that time it would sell for does not necessarily mean that in your opinion if there were a demand for real estate or somebody wanted it, it would not be worth more?

Mr. Cummings: I object to that as based entirely upon an assumption.

Mr. Neumann: That would be an exceptional matter.

The Master: Here is the trouble.

Mr. Cummings: You are asking about a factor that is not present.

The Master: Here is the situation, and here is the trouble with this kind of testimony. Mr. Dede goes there for the purpose of assessing this property for taxation purposes. He must value it in accordance with the statutory rules and requirements. He is not permitted to say, Well, you could not sell that property today for more than \$10,500, but if I had it I would not sell it for any such figure, I think it is worth more, but for taxation purposes I cannot give it any greater value than that.

Mr. Cummings: The sale value is the best evidence of value.

1677 ation.

The Master: I know, but here is the situation. Here is this gas company that has a piece of property over there. It is not offering it for sale, does not intend to sell it, it is using it. Now, Mr. Dede in the performance of his duty is limited to the kind of value that he puts on it.

Mr. Cummings: You mean a sale value.

Mr. Neumann: I must beg to differ with the Master on that and take issue with him.

Mr. Cummings: You mean a sale value.

Mr. Neumann: These assessors are required by statute, the law states what they are to do.

The Master: They are required to give their opinion as to what that property at the time they are assessing it would sell for.

The Witness: Under ordinary circumstances.

The Master: At that time.

The Witness: Yes.

Mr. Neumann: Your Honor is putting in an element of an extraordinary circumstance.

The Master: At that particular time is somebody wanted to sell it, what you could sell it for.

Mr. Cummings: Suppose you could not sell it?

The Master: That is the trouble with values.

Mr. Cummings: The lots would be practically worthless then.

The Master: Yes. So far as the taxing department is concerned it would be unfair to the owner of the property, assuming n

stranger, not a gas company, owned this particular property, if you assessed it on any basis other than what it would sell for at 1678 that time under ordinary circumstances; that is the basis.

Mr. Neumann: What was Mr. Halleran's testimony based on that it was worth \$55,000 in 1919; what it would sell for?

The Master: No.

Mr. Neumann: That is what he said; I brought it out from him, what other properties in the neighborhood sold for, as compared with it.

The Master: What I am getting at is this. In my judgment there is a very clear distinction between a value placed on it and the circumstances under which a deputy tax commission must work under the statute, and the value of that property where a man is not forced to sell at that particular minute. Am I right about that, Mr. Dede?

The Witness: Yes.

Mr. Neumann: He said an ordinary sale, between a willing buyer and a willing seller.

The Master: Yes.

Mr. Cumming: That is the only valuation you can place upon a piece of real property. You cannot say, Well, nobody wants to buy it this year.

The Master: But the trouble is this, that the taxing official has got a particular situation in mind. He is trying to do the fair thing as between the public and the community itself. He has got to get a fair value, fair to all of the property owners, and having in mind that the city has got to raise revenues to pay its expenses.

1679 Now, what I want to get from Mr. Dede is, whether he wants to say that the value that he fixed in accordance with his statutory obligations is in his opinion the same value that he would give to it if he were not limited, as he was under the statute, to the particular value at that particular minute for a sale under ordinary circumstances, or whether it is not the fact that for taxing purposes he was bound to have in mind the fact that there was no ready sale for it at that time, and that a man could not sell it unless he found a man willing to buy it very cheap.

Mr. Neumann: I object to that on the ground that it is incompetent, immaterial and irrelevant, all fully covered, because the witness has fully testified to what factors he took into consideration in arriving at his value.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Cummings: He is not limited in the Charter at all in placing the valuation except as to sale valuation.

The Master: I will overrule the objection and ask Mr. Dede to answer, if he will.

Mr. Cummings: Exception.

The Witness: I would say that at that time the value as fixed would have been the value that could have been obtained in the open market.

Q. If you found somebody ready to buy it?

A. Of course you would have to find a buyer, but I think a buyer could have been found at those figures; that those figures were not beyond the bounds where a buyer could be found.

1680 The Master: Would you say that the property was worth no more than that to the owner who owned it and was using it?

Mr. Neumann: I object to that; there may be sentimental values attached to it.

The Master: Leaving out sentiment altogether.

Mr. Neumann: Or the fact that a man is holding it for investment, for a rise in price, and there are a number of factors of that kind.

The Master: Here is a company that is actually occupying and using a piece of property; it is not offering it for sale; it does not want to sell it; it wants to continue to use it, and it is asking the court to fix its fair value in connection with its use; as to what its fair value was to it for the purposes for which it was being used. Now, I am not going to ask this witness to give me his opinion of value. I simply brought out that he believed, as I believe, that there is a difference between the value that he was bound to put on having in mind that the most you could get, for a ready buyer ready to pay for it was the figure that he fixed on it, and the figure at which it would be worth to this company for its use—

Mr. Neumann: That is objected to upon the ground that the Master's question presupposes the very question that the Master would have to decide in this case, and is not the subject of opinion evidence by this witness.

Mr. Cummings: And I also object to it upon the ground that it is incompetent, immaterial and irrelevant.

1681 The Master: My mind is still as it was, that opinions are so flexible and so variable, that I prefer to find out what was actually invested, but I want this record to show how uncertain the opinion of an expert witness is as to value.

The Witness: If you want to hear what I think of this particular proposition.

The Master: Yes, I will take anything.

Mr. Neumann: That of course is all over our objection and exception.

The Master: All right; we are in a court of equity.

The Witness: In this particular case the property was being used for a particular purpose, and for that particular purpose the property may have a value to the man that is using it far in excess of that he could probably buy the next plot for.

By Mr. Vilas:

Q. You did not take into consideration then that value, the use of the property for a gas works in fixing your value?

A. I did, because the factor per front foot on that land is less than the factor on the surrounding property.

Q. What is the factor on the surrounding property?

A. On Farrington Street, for instance, across the street, there is a \$10 factor as against a \$14 factor on the side of the gas company. On Center Street there is a \$16 factor against the gas company as against a \$8 factor across the street.

Q. Is it not your opinion that the presence of a gas works has a deteriorating influence on adjoining property?

1682 A. That depends on the character of the adjoining property. In this case the gas works I do not think affects that property.

Q. What is the character of the property you just described?

A. Very cheap old buildings; buildings that were practically obsolete.

Q. Residences or business plots?

A. Residence property.

The Master: Then do I understand Mr. Dede, that you have not figured this property on which the gas plant stands the same as you did the adjoining property?

The Witness: No.

Mr. Cummings: Higher.

By the Master:

Q. It was not worth any more if you sold it under ordinary circumstances?

A. We took into consideration the particular use to which the property was being put.

Q. You had not any right to under the statutes?

A. Yes, we can.

Q. The land?

A. It comes down to a matter of opinion of the man who is making the assessment.

Q. The land unimproved not binding yourself to what is on it, forgetting there is anything on it, is worth no more on one side of Farrington Street than on the other?

A. Not if you look at it in that way.

Q. Is not that the way the statute requires you to look at it; land wholly unimproved?

Mr. Cummings: You can take into consideration its value and use for any particular purpose.

1683 Mr. Neumann: Mr. Vilas brought out the factors that he took into consideration, and he showed quite clearly that he took into consideration the fact that this was used for a gas plant and gave it a higher value than surrounding plots.

By the Master:

Q. What is the surrounding property; is it filled in?

A. On some streets it was. On Myrtle Avenue, on Farrington Street, these are filled. This is running down into a swamp.

Q. And the property on the other side of Myrtle Avenue and Farrington Street?

A. This is on grade over here, south of Myrtle Avenue.

By Mr. Vilas:

Q. At this time was Block 170 filled or was it low?

A. It was graded because the buildings were on it.

Q. What about Block 171; I think you said that was under water?

A. Block 171 was. The plot where the tanks are of course, were on grade, and the balance of it was running down into a swamp. This was the edge of the soft meadow.

Q. Did Block 171 have a frontage on Farrington Street, Lot 40?

A. Yes; that had a frontage; Farrington Street was on grade.

Q. Did Lot 40 front on Farrington Street?

A. No, that fronted on 31st Street or Center Street.

Q. It had no frontage on Farrington Street?

A. No.

1684 Q. With the exception of the tanks, it was all low and unfilled?

A. If my recollection serves me, the tanks in the Farrington Street front had a couple of buildings near it.

Q. Was there any factor of equalization applied to this property by the State Board, if you know?

A. I do not know anything about that.

Q. You do not know that?

A. No.

Q. You did not follow that up?

A. No.

The Master: How many of these tax witnesses have you got?
Mr. Cummings: Four of them.

GEORGE W. HILLEY, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

Direct examination.

By Mr. Cummings:

Q. Where do you reside, Mr. Hilley?

A. Woodhaven.

Q. What is your position with the City?

A. Deputy Tax Commissioner.

Q. How long have you been such?

A. Twelve years.

Q. And prior to that you were what?

A. I was clerk to a deputy tax commissioner for a period of three years.

Q. You hold your present position, do you, as a result of some examination, some civil service examination, and you received your appointment from some eligible list?

1685 A. I did.

By the Master:

Q. Prior to your being a clerk what was your business?

A. I was buying and selling real estate for a period of about three years.

Q. Where?

A. In and around Jamaica.

By Mr. Cummings:

Q. Were you assigned to the section in Queens, the Tax District there, in which is located the property of the New York & Queens Gas Company?

A. I was.

Q. During what years were you assigned to that?

A. Beginning with 1909 valuation; I went to work there in 1908.

The Master: How many years?

The Witness: 1909 to 1915 inclusive.

By Mr. Cummings:

Q. During those years, Mr. Hilley, did you make a personal inspection of the property of the New York & Queens Gas Company with the idea of determining its value?

A. I did.

Q. And you furnished the Tax Department, did you, with a sworn statement of the property, and of the taxable property in that district with the values placed on each property by you?

A. Yes.

The Master: Take the land unimproved. What did you believe it to be worth in the years from 1909 down?

1686 Mr. Vilas: That is objected to upon the ground fully stated with respect to the previous witness.

The Master: Objection overruled.

Mr. Vilas: Exception.

The Witness: From 1909—you see, a number of additions have been made to that parcel. It will be necessary to describe the parcel for 1909 and the following years. You see these lots were thrown in.

A. They were purchased during the summer?

A. Yes.

The Master: I have got to have a valuation during all these years of the property that is now occupied.

Mr. Cummings: Yes.

The Witness: And for 1909 and the various ones that were subsequently taken in.

By the Master:

Q. In 1909 what lots did you appraise there?

A. Lot 31 as it stood then in 1909, had a valuation of \$4,000.

Lot 43 which has since been merged in it had a valuation of \$200, and 44 had a \$200 valuation.

Q. That means that was your opinion of its value then?

A. That was my opinion.

Mr. Cummings: What it would sell for under ordinary circumstances.

The Witness: Lot 45 had \$450 valuation, Lot 34 had \$900, Lot 39 had \$500, and Lot 47 had a valuation of \$400.

Q. That was a total of how much for that year, for all of the parcels that are now in the gas plant on that block?

A. \$6,650 for the year 1909, I make it.

1687 Q. Now for 1910.

A. As to 1910, Lot 31—

Mr. Vilas: May I interrupt? Were those lots you have given now at that time all owned by the gas company?

The Master: No, they were not.

The Witness: I do not know.

Mr. Cummings: They were not.

Mr. Vilas: You are giving the property now owned by the company?

Mr. Cummings: Yes, which property is now owned by the Gas Company.

Mr. Vilas: I do not understand the materiality of that. They did not own the property or claim it in those other years.

Mr. Cummings: You purchased it; your deeds show you purchased it.

The Witness: For 1910 the land values were exactly the same in every case.

Q. Now 1911.

A. In 1911 there were some increases. Lot 31 is \$8,000.

Q. \$8,000?

A. Lot 31 is \$8,000, and Lot 43 is \$350.

Q. \$350?

A. Yes, sir. Lot 44, \$350. Lot 45 was \$850, and Lot 34 was \$1,400. Lot 39 was \$700, and Lot 47 was \$750, making a valuation of \$12,200.

Mr. Vilas: Are those the same lots that you described before?

The Witness: The same lots.

The Master: This witness is taking all the lots that are now included in the property you claim.

The Witness: Yes.

1688 The Master: And he is giving them for each year, as they then appeared on the tax map.

Mr. Vilas: Yes, that is clear.

The Witness: I make that \$12,200.

Mr. Vilas: How much?

The Master: \$12,200, he said.

The Witness: \$12,200.

Mr. Cummings: Now for 1912.

The Witness: For 1912 there is only one change, but I will read them all off. Lot 31 was \$8,000; Lot 43 was \$350; Lot 44 was \$350; Lot 45 was \$950; Lot 34 was \$1,400; Lot 39 was \$700; Lot 47 was \$850, making a total valuation of \$12,600, I make it.

Mr. Vilas: That was for 1912?

The Witness: Yes.

Q. Now, 1913.

Mr. Cummings: It is increasing, you see, Mr. Vilas—all of which helps you.

A. 1913 they were identically the same.

Q. How about 1914?

A. From 1914 a number of them were merged into Lot 31, and they were a total of \$10,500, and 34 and 39, which were merged in later. Lot 31 is \$10,500; Lot 34 was \$1,400; Lot 39 was \$700. That included the Lot 47 also for 1914.

Q. That made a total of how much?

A. \$12,600. That may be the same valuation as 1913.

Mr. Vilas: That is 1914?

The Witness: 1914.

Mr. Vilas: And the total is \$12,600?

The Witness: Yes.

Mr. Cummin-s: Now for 1915.

1089 The Witness: 1915, Lot 31, \$10,500; Lot 34, \$1,400; and Lot 39, \$700. That I guess is the same, \$12,600.

Q. Did you hear the testimony of Mr. Dede about improvements?

A. I did.

Q. And is your testimony the same as his?

A. Identically the same.

By Mr. Cummings:

Q. Mr. Hilley, you also placed a valuation upon the land as improved, did you?

A. I did.

Q. During those years?

A. Yes.

Q. What improvements did you find upon the land?

The Master: Do not let us waste time about it.

Mr. Cummings: You do not want that, then?

The Master: Mr. Hilley, as I understand it—well, you can ask that question.

By the Master:

Q. You did find these gas works on the property, did you?

A. I did.

Q. The buildings and machinery and apparatus and gas holders?

A. Yes.

Q. And, as I understand it, you fixed your values there in the same way that Mr. Dede did?

A. I did.

The Master: Do you want to ask him the figure?

Mr. Cummings: Yes.

1690 The Master: Do *you* answer this question, Mr. Hilley; it is just being asked for the record so I can rule on it.

By Mr. Cummings:

Q. Will you state the valuations you placed upon the land as improved?

Mr. Vilas: Objected to on the same grounds.

The Master: During these years?

Mr. Cummings: Yes, during these years.

The Master: The objection is sustained.

Mr. Cummings: Exception.

The Master: The Master does not believe the witness' testimony should be received on that point.

Mr. Cummings: That is all.

The Witness: By the way, that Block 171, Lot 40, do you wish

to—

The Master: *Didn't* give us that?

The Witness: No.

The Master: Give us Block 171 during the years, too.

The Witness: There have been lots merged in there.

The Master: Give it to us in the same way; do you see what I mean?

Mr. Cummings: Just the same as you did the other properties.

The Witness: I want to know whether Lot 45—whether they own that or not. I do not know whether they own that or not. Will you tell me whether Lot 45 belongs to them also.

The Master: No, it does not.

Mr. Neumann: Well, they have their map here. May not the witness have the map?

1691 The Master: No, he has got it; it is 125 feet.

Mr. Neumann: We show the witness Complainant's Exhibit 47.

The Witness: In that case all the lots that are included in the present lot 40, of 125 feet frontage, for 1909 the land was valued at—do you want each parcel separately?

The Master: No, give me the total.

The Witness: \$1,350 for 1909. For 1910, \$1,350. For 1911, \$2,300.

Mr. Vilas: Unimproved?

The Witness: Unimproved. 1912, \$3,400. That includes the lots that came in later; that takes in the entire 125 feet. \$3,400 for 1912. I think there must be some mistake in that.

The Master: What was it in 1913; what is your figure on lot 40 in 1913?

The Witness: It left only \$1,000 on this part here (indicating).

The Master: In 1913?

The Witness: Yes.

Mr. Vilas: What does that include?

The Witness: Why, that includes the 125 feet. Up to 1913 the present lot 45 was included in that valuation there. After that lot 45 was cut out of it.

By Mr. Cummings:

Q. And it left \$1,000?

A. It left \$1,000.

Q. For this particular piece?

A. It left \$1,000 in 1913 for this 125 feet.

By the Master:

Q. The answer to it is that you cannot tell us, you cannot give us the figures prior to 1913?

1092 A. That is it.

Q. For 1913, 1914 and 1915 it was a thousand dollars?

A. Yes, a thousand dollars.

Q. For lot 40?

A. Yes.

Q. Before 1913 on account of the way the lots are laid out you could not tell us the valuation?

A. No.

Mr. Cummings: You could apportion it.

The Witness: It could be done. It would be just the same as it is today.

Q. Right back, \$1,000 through the years?

A. Yes. In fact it was not increased.

By Mr. Cummings:

Q. That is your opinion, is it, Mr. Hilley, that this valuation of that particular parcel there to which your attention has been called is \$1,000?

A. Since 1911.

Q. Since 1909?

A. Since 1911.

Q. Was that valuation continued during 1914 and 1915?

A. It continues during those years, 1913, 1914 and 1915.

Cross-examination.

By Mr. Vilas:

Q. What frontage, Mr. Hilley, do you show on Myrtle Avenue in 1909?

A. We have shown 232 feet for 1909.

Q. Did that extend clear to Farrington Street?

A. No, only within a hundred feet of it.

Q. There were four lots, then, that were not then acquired?
A. That is it.

1693 The Master: But he has given us the figures for those four lots.

Q. You have given us the figures for all these years of those four lots?

A. Yes.

Q. Bird's Alley, what is the frontage?

A. A frontage of 300 feet.

Q. Did you assess thus the property within the confines of what appears to be block 170?

Mr. Cummings: He assessed it all around there.

A. I do not quite understand your question.

Q. We will change the form of that. I show you Complainant's Exhibit 47. Did you assess any property which lies apparently west of Center Street and in the line of Center Street produced?

Mr. Cummings: Do you mean in the bed of Center Street?

Mr. Vilas: No, I mean the line of Center Street extended.

A. Do you mean this land in here, in this street (indicating)?

Q. Yes.

A. No.

Q. You did not place any value on that land at all?

A. I did not place any value on it at all, because our map showed it to be open, you see.

Q. Did you inspect the property?

A. I did.

Q. Did you examine that particular part to see whether it was actually and physically open?

A. It was physically open.

Q. There was no occupancy by the Gas Company?

1694 A. Not to my knowledge, and it was always possible to pass through that street there, and we consequently passed through that street there on our way to and from the various parcels.

Q. Do you recall whether there was any actual occupancy by the Gas Company, or didn't you observe?

A. No, I do not recall now?

Q. You do not remember now?

A. I remember we passed through the street.

The Master: But the point is, you did not assess it, did not include any value for that in the value of this property?

The Witness: Not for the land in the street.

The Master: I am not going to try the question of title here just now.

Mr. Vilas: I am not going to try it, either; I want to see what he assessed.

Mr. Cummings: It would not be worth anything. We are trying to show that they grabbed off a piece of property.

Q. When you were in the real estate business you were in the town of Jamaica?

A. Yes.

Q. Is that the Second Ward?

A. Fourth Ward.

Q. The Fourth Ward of the Borough of Queens now?

A. Of the Borough of Queens.

Q. During what years were you in the real estate business?

A. Why, from 1903 to 1905.

Q. Were you in business for yourself or working for somebody else?

A. I was buying and selling for myself.

1695 Q. Did you have an office?

A. I had no office, just doing a real estate business. I had no regular office.

Q. Just buying and selling?

A. Yes.

Q. And selling for others?

A. Yes, in some cases.

Q. As a broker?

A. As broker.

Q. Did you operate in the Third Ward at all during that period?

A. I did not.

Q. You were not familiar with properties there?

A. What?

Q. You were not familiar with the property there?

A. I was not.

Mr. Neumann: One moment. That is objected to on the ground it is incompetent, irrelevant and immaterial, the Fourth Ward is the one they are talking about in this case, not the Third.

The Master: Overruled.

Mr. Neumann: Exception.

Q. The character of property in the Fourth Ward is considerably different from the character of this property of the New York & Queens and the Flushing, is it not?

A. No.

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial.

The Master: Overruled.

Mr. Neumann: Exception.

Mr. Cummings: You do not want to try the character of the property all over the city of Flushing there.

1696 The Master: The objection is overruled.

The Witness: Shall I answer that?

The Master: Yes.

The Witness: There are places in the Fourth Ward of similar character to the location of this gas plant. I can find plenty of places in the Fourth Ward that are exactly similar.

Q. Is there any waterfront property in the Fourth Ward?

A. Is there any waterfront?

Q. Yes.

A. Well, there is on Jamaica Bay, yes.

Q. On Jamaica Bay?

A. Jamaica Bay.

Q. That is on the ocean side of the property?

A. Yes.

Q. When you appraised this property for taxation during the years that you have testified to, did you have before you any sales, leases or mortgages?

A. I had some sales on those streets. I am not sure; I have not the data now, but I will swear that on Center and on the street on the north of it, on the bay side, there were sales of lots there from \$150 to \$200.

Q. Per lot?

A. From \$150 to \$200 per lot, because it is practically meadow land.

Q. Can you specify any lot or any property in the vicinity of this property that you have testified about on which you had any sales or data?

A. No, I cannot point out any particular lots, but there were sales there at \$150 and \$200.

Q. Are you testifying now from memory or from some memoranda?

A. From memory, because I have not the memoranda at hand now any more.

1697 Q. And you cannot give us specifically any lot on which you had a sale during those years?

A. I cannot.

Mr. Cummings: I object to it as incompetent.
The Master: Overruled.

Q. Or during any one of those years?

Mr. Cummings: I object to it as incompetent, irrelevant and immaterial and not within the man's memory now.

The Master: Overruled.

Mr. Cummings: He cannot carry all that data in his mind. Exception.

A. I do not care to refer to this book now, because it has been out of my hands for five years, and I would not want to be governed by the notes in this book. It might be my handwriting and might not.

Q. Have you made any effort to determine by inspection of the books whether there are any notes in there in your handwriting?

A. No, the time was too limited. I was only notified of this yesterday afternoon and I had not the time to go through it.

Mr. Cummings: All right, you were not supposed to.

Q. When you testify about the values that you put on these lots, you refresh your recollection from the record of the assessments that you turned in; that is true, is it not?

A. Yes.

Q. You could not have come here and testified to the values you put on these various lots from memory, could you?

A. Oh, no; decidedly not.

698 Mr. Cummings: Any more than he could remember these mortgages and deeds that you are asking him about.

Q. And you do not believe that you had under consideration any mortgages or leases?

A. No, I do not, not mortgages. We have mortgages on dwellings in that neighborhood, but they would be practically useless to us here on this plant.

Q. Why?

A. Well, they would include dwelling houses, which would be of no use to us in arriving at a valuation of the gas plant.

Mr. Cummings: A mortgage would not be any evidence of valuation of vacant property.

Q. Had you any mortgage on unimproved lands?

A. Well, as I said, I do not know of any notes here, and if I did and any notes I would not care to use them as evidence; because, as I said, the book has been out of my hands for five years, and it might be some other person's notes.

Q. Those books are erased from time to time, are they not, or the values in them?

A. The valuations in them are never erased. Some of the notes may be, to make room for new notes.

Q. Some of them are erased to make new notes?

A. If we have to do that, occasionally, yes, because these books are used for a period of five or six years. We have to do that.

Q. Is the field book that you have before you in use now or has it been superseded.

A. It has been superseded.

Mr. Cummings: I object to it as incompetent and immaterial.

709 Mr. Neumann: The field book is not in evidence.

The Master: Overruled.

Mr. Neumann: Exception.

The Witness: This book was used up to and included 1920 and the last year in it is 1920, the current year.

Q. That is for the valuations made for the current year?

A. Yes.

Q. Was that the book you used beginning with 1909?

A. Beginning with 1913.

Q. That you have used from 1913 to date?

A. Yes.

Q. And prior to that time after 1909 on you used another book?

A. I used another book.

Q. And that book you have not now before you?

A. No, this is the book from 1913 to 1920; the other book is not here now.

Q. So when you testify to conditions as they existed prior to 1913 you are testifying not from the field book you have, but from some other memorandum?

A. From a memorandum that I gathered yesterday from the other book, the book prior to this one.

Mr. Cummings: These books are not in evidence. He has testified as an expert, and it does not matter where he gets his figures from.

The Master: Objection overruled; it is cross-examination.

Q. The other book that you examined at the office you did not bring here?

1700 A. I examined it at the office.

Q. And it is not in court and was not before you when you were testifying?

A. No.

Mr. Cummings: That is conceded.

Mr. Neumann: It is conceded as not important.

Q. What was your frontage rate on Myrtle Avenue in 1909?

A. The map does not show that it was for 1909, but these are my figures. I think they were put in for 1911.

Q. You are referring now to the Tax Map, are you not?

A. I am referring to the Tax Map.

Q. The deputy's copy?

A. That is it. And those are my figures, and they were put in there in 1911.

Q. You cannot give us the frontage figure for 1909, can you?

A. I cannot.

Q. What is the figure for 1911 that you have there?

A. \$20 on Myrtle Avenue.

Q. \$20 on Myrtle Avenue, and how much on Farrington Street?

A. \$14. That is not including the extra depth. Those lots had slightly extra depth of about 25 feet.

Q. You made an allowance for the extra depth, did you?

A. Yes.

Q. And your valuation is figured purely on a frontage basis?

A. It is.

1701 Q. And nothing was allowed for plottage?

A. Not in this case. The land is cheap land and we never considered that at all.

Q. Do you allow nothing for plottage in the Third Ward at all point?

A. I am not in the Third Ward now; I am in the Second.

Q. Well, did you when you were there?

A. We did on the main street.

Mr. Cummings: Where they could plot it.

The Witness: On valuable ground we did, yes.

Q. But this ground you did not consider had any added value from the fact of it being in a common ownership?

A. No.

Q. Do you not consider that if the property were to be acquired it would cost more to acquire it and get it into one common ownership than the straight unit values of single lots?

Mr. Cummings: I object to that as incompetent.

The Master: I will allow it.

Mr. Cummings: Exception.

A. It is very likely that it would, but I would not consider that in arriving at the assessed valuation on it. Very likely it would have some more value.

Q. When you arrived at the assessed valuation you did not consider the cost of acquiring the property as it existed, but you did consider that it would cost more if it were to be sold at that time wholly unimproved?

Mr. Cummings: That is objected to as incompetent, irrelevant and immaterial; it is not a factor to be taken into consideration in valuing property, anyway, the purpose of consolidating it under one holding. The only evidence at all would be plot-
102 tage value upon this particular piece, and, in view of the fact that it is low land, that has no plottage value, and that it is apparent the plottage only has a value to be cut up for residential purposes.

The Master: I think it is proper on cross-examination.

Mr. Cummings: Exception.

A. I treated this parcel practically the same. I will not say that I did not make a difference of possibly \$2 a front foot on each side of the street, in assessing this property according to this map. It shows that the east side of Farrington Street is assessed at only \$10 and this west side, which is on this property, at \$14. So I did make a distinction, and that is as far as I went in assessing this higher than the adjoining property.

Q. Upon what basis did you make that distinction, Mr. Hilley?

A. Well, on the theory that the gas plant is largely responsible for the poor condition of that neighborhood. It has deteriorated the neighborhood, there is no doubt about it.

Q. The gas plant tends to deteriorate adjoining property values, does it not?

A. There is no doubt about it.

Q. And if you find poor buildings and cheap improvements in the presence of a gas plant you can assume it is partly due to the presence of the gas plant?

A. That is it. It is very true that it is a poor residential section just on account of that gas plant.

Q. And is it not a fact that the depreciated values of the adjoining residential section react upon the gas plant prop-

Mr. Cummings: I object to that upon the ground it is incompetent and immaterial, the property being assessed is unimproved property, you know.

The Master: Overruled.

Mr. Cummings: Exception.

A. Yes, that is very true. The property would be more—

Mr. Cummings: He is assessing this property as unimproved property, and it does not matter whether it is a gas plant or any other kind of property.

Q. Mr. Hilley, you said you assigned on Farrington Street there is a factor of \$14 a foot?

A. On the west side of the street, yes.

Q. Yes, on the west side of the street. In the earlier years to which you have testified the gas company did not own all the Farrington Street frontage, did it?

A. I do not know when they came into possession of it, but those lots on Farrington Street were thrown into Lot 31, were merged into it, in 1914. Those are lots 42, 43 and 44.

Q. Those are lots with a frontage on Farrington Street?

A. On Farrington Street.

Q. Before 1914 what front-foot unit did you use for those lots?

A. Our book here does not show the land value for those years, our book here is good for six or seven years, and yet it only shows the land value for two years and does not show the value for those years at all.

1704 Q. You gave us the value for those lots from the memorandum here?

A. Oh, yes, because I copied ahead of this.

Mr. Cummings: I object to this, your Honor. The mere fact that the book leaves out something is incompetent, irrelevant and immaterial. The book is not in evidence and he is not testifying from any book.

Mr. Vilas: We will get the point in a minute now, so do not worry.

Mr. Cummings: He is testifying from his own knowledge here of conditions. The book might all be left out for that matter.

The Master: Overruled.

Mr. Cummings: Exception.

The Witness: What years did you wish?

Q. Prior to 1914, prior to the time that they were merged into the larger plot?

A. Take it for 1911, 1912 and 1913, lot 43, which is a 25-foot by 100 feet deep, was assessed at \$350. That would make it \$14. You see, I assessed it at \$14.

Q. You used the same factor, then?

A. \$14.

Q. Have you any idea what was on that property then?

A. No, I have not.

Q. There was a residence on it, was there not?

A. There was a valuation on the improvement of \$750. Now, what it was I do not know.

Q. You remember, do you not, that there was a residence on some of this property fronting on Farrington Street, on the west side?

A. I do not recall what the building was, and the book here does not show it.

Mr. Cummings: He does not remember.

1705 The Witness: There was an improvement on it, though.

Q. You do recall, however, that during those prior years, those earlier years, it was not a part of the other property, the larger property in that block?

A. I do not recall what those improvements were used for; I could not say.

Q. But your records do tell you that it was not a part, not merged into the other plot?

A. Not merged into it.

Mr. Cummings: I object to it as incompetent, irrelevant and immaterial at this time.

Q. Have you any record of the owners at that time of this property?

A. No, we have no records of the owners. They are not shown at all.

Q. But it is a fact that as to these lots that were merged in 1914, you used the same front-foot factor as you did upon the rest of the property?

A. I did.

Q. If that property was occupied by a residence in those years, would not the presence of the gas plant tend to depreciate its value?

Mr. Cummings: I object to it on the ground it is incompetent, irrelevant and immaterial. This man is testifying to the unimproved values and counsel keeps talking about gas plants and residences being on it.

The Master: Overruled.

Mr. Cummings: Exception.

A. I am not prepared to say now whether the Gas Company was using those lots, and yet having merged them into the lot 31, or why it was we used that factor.

1706 Q. Now assume that the Gas Company did not own those lots at that time, would you still assign to those lots the same front-foot factor that you would to the Gas Company's property?

Mr. Cummings: Objected to on the ground it is immaterial. It does not matter who owns the lots. Mr. Hilley did not take that into consideration, who owned them.

The Master: Overruled.

A. I should say that if I had been under the impression that it belonged to private owners, and back right up against the gas plant,

I would not have used that factor that I did, \$14. I would not give a higher factor than it was across on the opposite side of the street. What the reason was I could not tell you at this time; I do not know if I was under the impression the gas company owned the buildings, I could not say.

Q. But if it is a fact that the Gas Company did not own the property and the buildings, you think that that property should not have had the full \$14 valuation?

Mr. Cummings: I object to all this testimony.

The Master: Overruled.

Mr. Cummings: Exception.

A. I should say it would have been assessed higher than the property on the other side of the street which was in a better location than these were. What my object was in assessing these lots higher than the ones on the other side of the street, I do not know, unless they belonged to the Gas Company.

Q. You have no personal recollection on that point?

A. I have not, no.

1707 Mr. Cummings: He is taking into consideration the improvements and then asking him how he valued this property, in view of the fact that certain improvements are adjoining them. Mr. Hilley is testifying to the whole plot as unimproved. All of this evidence is incompetent, your Honor, and immaterial. If you want to expedite this thing, what is the use letting in all this?

Mr. Vilas: What is that?

The Master: Never mind, proceed.

Q. Have you any recollection, Mr. Hilley, that there were three or four houses near the corner of Farrington Street and Myrtle Avenue, between 1909 and 1914?

A. There were buildings there. What the buildings were I have no means of knowing at this day.

Q. You have no personal recollection on it?

A. I know there were buildings there.

Q. You know there were buildings?

A. There were buildings there.

Q. But you do not recollect whether you valued them as belonging to the Gas Company or as private dwellings?

Mr. Cummings: Objected to as incompetent, irrelevant and immaterial.

The Master: Overruled.

Mr. Cummings: It does not matter who they belong to. They might have belonged to Mr. Spear. Exception.

A. I have no knowledge at the moment: I have not the slightest knowledge.

Q. Do you know what rate the State Board adopted for equalization of assessments during the years that you have testified about?

1708 Mr. Cummings: Objected to as incompetent, irrelevant and immaterial, nothing to do with this matter.

The Master: Objection sustained.

Mr. Vilas: Exception. That is all.

PATRICK J. CRONIN, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

The Master: How many years did you have this property?

The Witness: 1917, 1918, 1919 and 1920.

Direct examination.

By Mr. Cummings:

Q. Where do you reside, Mr. Cronin?

A. 505 West 49th Street, Manhattan.

Q. What is your position with the City of New York?

A. Deputy Tax Commissioner.

Q. How long have you been such?

A. Since 1910.

Q. Prior to that time what was your business?

A. Clerk in the Department since Consolidation, 1898.

Q. You hold your position, do you, by reason of some examination?

A. I hold the position by competitive examination.

Q. What is your duty as a deputy tax commissioner?

A. To visit the property, starting April 1st of each year, and bring in a report as of October 1st of each year for the succeeding year.

1709 The Master: Report of what, Mr. Cronin?

The Witness: Of the taxation for that period, in my district.

The Master: Your opinion as to the value?

The Witness: My judgment as to value.

Q. Were you assigned to the Assessment Tax District in which included the property of the New York & Queens Gas Company?

A. Yes, sir.

Q. During what years were you assigned to that district?

A. In 1916 for the tax of 1917, 1918, 1919 and 1920.

Q. Did you during each of those years visit the property for the purpose of determining its value, what it would ordinarily sell for?

A. Yes, sir.

The Master: If unimproved?

Q. Yes, if unimproved.

A. Unimproved.

Q. And you furnished to the Tax Department, did you, a sworn statement or report of all the taxable property in that district?

A. Yes, sir.

Q. And the values placed on such properties by you?

A. Yes.

Q. You may state, Mr. Cronin, the sum for which in your judgment each separate parcel of real estate now owned by the New York

& Queens Gas Company would sell under ordinary circumstances, if wholly unimproved?

Mr. Vilas: I object to that upon the grounds previously stated, and particularly press my objection to the qualifications of
1710 this witness. He is not qualified to state values.

The Master: Objection overruled.

Mr. Vilas: Exception.

By the Master:

Q. He means Block 170, Lot 31, Block 171, Lot 40. I think those two pieces were intact during the years you had it, were they not?

A. No, separate assessments.

Q. What do you mean?

A. They are separately assessed.

Q. The two blocks?

A. The two blocks are separate and the two lots are separate.

Q. Yes, but Block 171, Lot 40 was this entire 125 feet?

A. Yes.

Q. During all those years?

A. Yes.

Q. And Block 170, Lot 31 was the entire area during those years?

A. Yes, sir.

By Mr. Cummings:

Q. Beginning with the year 1917——

By the Master:

Q. Give us 1917, 1918, 1919 and 1920 right through, for Block
170, Lot 31.

A. Block 170, Lot 31, for the year 1917, land \$12,600.

Block 170, Lot 31, for the year 1918, land \$12,600.

Block 170, Lot 31, for the year 1919, \$12,600.

Block 170, Lot 31, for the year 1920, \$12,600.

Q. Now, Block 171, Lot 40.

A. Block 171, Lot 40, for 1917, 1918, 1919 and 1920, \$1,000 each
year.

1711 Q. You also appraised the improvements?

A. Yes, sir.

Q. The improvements were the gas works?

A. Yes, sir.

Q. The gas holders and apparatus, and all the rest of it?

A. Yes, sir.

Q. Did you hear the testimony of Mr. Dede?

A. Yes, sir.

Q. Did you fix the value of those improvements in the same way that he fixed them, taking the Department factors?

A. Well, we get the Department factors each and every year, but we use our own judgment besides that.

Q. In these years did you use the Department factors?

A. I did use them.

Q. Were those the factors that you applied, the Department factors?

Mr. Cummings: I object to that. He could use his own independent judgment or any other factor.

Q. Did you ever buy, build or sell a gas holder?

Mr. Cummings: I object to that.

A. No, sir.

Q. Did you ever buy or build a gas works?

A. No, sir.

Q. Or gas apparatus?

A. No, sir.

Q. Did you ever buy or build any building?

A. I bought buildings.

Q. Did you ever build them?

A. I didn't build them, I bought them.

Q. How long ago?

A. Since 1908, twelve years ago.

1712 Q. You didn't appraise these buildings separate from the apparatus and holders, did you? The figure you put on it included everything?

A. The apparatus and the improvements.

Q. Everything together?

A. Yes, sir.

Q. You cannot tell us now what you figured the buildings to be worth separate from the apparatus and holders, can you?

A. I can, yes, sir. I have the buildings here.

Q. Separate?

A. Yes, sir.

The Master: I will take his estimate of buildings.

Mr. Neumann: There is another point. You simply asked him whether he bought any property or built it. How about if he sold any?

The Master: Let us have it perfectly clear. There isn't a deputy tax commissioner that I have met either in this case or in the Consolidated case who would undertake to say that independently of information gathered by the Department he knew anything about gas apparatus, or gas holders, or as to the cost of constructing them or building them. My recollection is that Mr. Cronin was a witness in the Consolidated Gas case. Is that so, Mr. Cronin?

The Witness: I was.

The Master: I don't think he undertook to say in that case that he had any particular knowledge or experience as to gas apparatus and holders.

The Witness: By selling or building gas apparatus, no.

713 The Master: Or holders?

The Witness: No.

Mr. Vilas: He was called as to property that had holders on it, and he was not permitted to testify.

The Master: My recollection is perfectly clear, and I want to get this record right, that Mr. Cronin's figures as to the value of gas apparatus and holders were the figures that had been collected by the department. Isn't that so?

The Witness: Yes, sir.

The Master: Now, you say you do have some knowledge as to buildings?

The Witness: Yes, sir.

The Master: Did I take your testimony as to the value of buildings in the other case?

The Witness: No, I don't think you did. There were no buildings on the property that I assessed, except gasometers.

The Master: If Mr. Cummings wants you to give the value of the buildings as distinguished from apparatus and holders I will take it.

Mr. Cummings: It is immaterial whether Mr. Cronin has ever bought or sold or had anything to do with gas holders. The mere fact that a man buys a gas holder, or sells a gas holder, does not qualify him as to values. He might get stuck either way. Mr. Cronin might have conducted an independent investigation as to these things, and he might be better qualified to testify as to their value than a man who had bought and sold them.

The Master: I will sustain the objection.

Mr. Cummings: Exception.

1714 The Master: You are going to have the engineers for the purpose of giving values on apparatus, and I am not going to take Mr. Cronin's values.

By Mr. Cummings:

Q. Will you give us the value that you placed upon the buildings, the improvements here, exclusive of the machinery and apparatus?

Mr. Vilas: I object to that on the ground that the witness is entirely unqualified to give an opinion as to the value of buildings. Furthermore, there is no basis for such valuation. We don't know what he was valuing.

The Master: We will find that out. Objection overruled.

Mr. Vilas: Exception.

By the Master:

Q. You understand the question, buildings without any apparatus?

A. The buildings without any machinery.

Q. Yes.

A. For 1917, \$21,400.

For 1918, and 1919 and 1920, \$25,200.

Q. Are those the buildings on Block 170?

A. Block 170, Lot 31.

Q. Are there any buildings on Block 171, Lot 40?

Q. There are two tanks, no buildings.

Q. Don't give us the tanks?

A. I have the price for the tanks.

Q. But I don't want your price for the tanks.

The Master: I won't take the witness' value of tanks. You have engineers who are going to come here and testify as to that. That is what they are being paid for, and they have made a study of it.

1715 Mr. Neumann: You may shut them out.

The Master: If you have competent engineers who know apparatus, and who know holders, I will let them put in the figures.

Mr. Vilas: The Attorney-General does not seem to have much confidence in his witnesses.

Q. Do you know if the New York & Queens Gas Company at any time filed—I don't know just how you designate it.

The Master: Did they protest your assessment?

Mr. Vilas: I object to that as incompetent, irrelevant and immaterial, and having no bearing upon the issues.

The Master: Objection sustained. A protest as to assessed values means nothing to me, because if this property, as one of the witnesses testified to, was appraised at a price higher than adjoining property of the same character precisely, then the Gas Company, irrespective of whether this property was worth more or less than the assessed value, had a perfect right to complain that this land was not assessed on the same basis as adjoining property of the same character. Therefore, I will not take these protests, they mean nothing to me.

Mr. Neumann: In those protests they may have made certain declarations against interest.

The Master: Then get the protest.

1716 Cross-examination.

By Mr. Vilas:

Q. What buildings did you assess, Mr. Cronin?

A. The buildings I assessed, or gave the figures for?

Q. You have given us the figures. I want to know what you assessed?

A. A building 25 by 35, one story brick.

A building 20 by 30, 2½ story.

A building 30 by 25 and extension, two stories.

A building 50 by 75, one story.

A building 30 by 100, one story.

A building 25 by 35 and extension, one story.

A boiler house, one story.

A building 20 by 25, two story.

A building 18 by 26, two story.

A building 18 by 26, two story.

A building 18 by 24, two story.

Q. Those were all the buildings upon the property?

A. Those were the buildings upon the property, Lot 31.

Q. Were they brick buildings?

A. Not all brick.

Q. You started describing brick buildings, and then you did not change from brick.

A. I will give it to you again.

A building 25 by 35, one story, brick.

A building 20 by 30, 2½ stories, frame.

A building 30 by 25, and extension, brick.

A building 50 by 75, one story, brick.

A building 30 by 100, one story, frame.

A building 25 by 35 and extension, one story, frame.

A one-story boiler house, brick.

A building 20 by 25, two story, frame.

1717 A building 18 by 26, two story, frame.

A building 18 by 26, two story, frame.

A building 18 by 24, two story, frame.

Q. Now, you have given us a figure that covers all the buildings as one item, is that right?

A. Yes, sir.

Q. Does the figures which you gave us cover any more than the buildings which you have just enumerated?

A. Do the figures cover any more?

Q. Yes.

A. No, just those buildings.

Q. You haven't got the tanks in that figure?

A. No, sir.

Q. And you haven't got any machinery in that figure?

A. No, sir.

Q. Did you arrive at these figures by details, or did you take them as a lump figure?

A. By details, by figuring each and every individual parcel and using a square foot basis, not a cubic foot basis.

Q. That is square feet of floor area?

A. Square feet of floor area.

Q. What did you get that unit of value?

A. Like on the machinery, the Department furnishes a unit but in my own judgment I go either up or down on the unit furnished, using my own judgment as conditions are at the time.

Q. The Department furnishes you with various units for various kinds of material, does it not?

A. Various kinds of buildings, not material.

Q. You have a different unit for a brick building and for a frame building?

A. When I assessed in Manhattan they gave us, for instance, \$5 or \$5.50 for hotels, and when I saw the hotel I might make
1718 it \$6 or \$6.50. The Board never ties us down to their figures, they let us use our own judgment, which we swear to.

Q. The point is that there is a different figure applied to different kinds of buildings?

A. Yes, sir.

Q. Based not only upon the material, but upon the use of the building?

A. Yes, sir.

Q. That is true, isn't it?

A. Yes, sir.

Q. And that was true in this case, you used different figures for the different buildings here?

A. Different figures for the different buildings I saw.

By the Master:

Q. What I understand is this, Mr. Cronin: The Department, we will say, fixes a unit of \$4 a square foot for a brick factory building. Just take that for illustration. You go and look at the building—

A. They would not give it as high as that.

Q. Well, what would it be for factories, \$1.50?

A. Well, no, the cost of material to-day has gone away up. Say \$2.50 or \$3.00.

Q. The Department says, generally speaking, taking a brick factory building this year, to figure it at \$2.50, subject to what you find. You go out and you look at the building, and you find it an old ramshackle thing, and you say, it is not worth \$2.50?

A. That is right.

Q. Then you go to another building and you find it is a fine building, with some special feature about it, and you say it is worth a half a dollar more?

A. Yes.

Q. And you go to a third building, and you find that it is generally the kind of building that the Department figures at \$2.50, then you take the Department's figure of \$2.50?

A. Yes.

Q. What I mean is this: Take three buildings standing here in a row. You look at the three buildings, and you have in mind the Department's figure for a brick factory building as \$2.50. Now, what is the usual type of factory building?

A. Yes, sir.

Q. And you look at the center building, and you find that is the kind of a building that the Department figures at \$2.50. Then you take the Department's figure, wouldn't you?

A. I would in that case.

Q. This building to the left you found, though, is in pretty bad shape, you will scale down the Department figure?

A. Yes, sir.

Q. And the one to the right you find is in extra good shape, then you would add something to the Department figures?

A. Yes, sir.

Q. But find a building that is the kind of building that the Department has in mind, the average building, you take the Department unit?

A. Yes, sir.

Q. In this case did you find these buildings to be particularly good, or particularly bad, or the average type of building to which the unit would apply?

1720 A. Well, I found them to be nothing extraordinary, ordinary stuff, poor, cheap, with here and there a good one like that boiler house which was built pretty strong. I increased the factor there a bit.

Q. What did you take for that, the Department factor?

A. I used the Department factor after my own judgment.

Q. Did you take the Department factor as the factor that ought to apply to that building?

A. Yes, as a basis.

By Mr. Vilas:

Q. Did the Department factor coincide with your judgment on those buildings?

A. Not at all times. Sometimes like the Master illustrated—with those three buildings, sometimes it would, sometimes it would not.

By the Master:

Q. Take 1919?

A. In this case I used my own factor disregarding the Department factor where I found the buildings poor.

Q. As to which buildings did you disregard the Department factor, and on which did you use the Department factor?

The Master: I think I understand the situation. If I were a Deputy Tax Commissioner and I was given a list of factors, and a factor for an average brick factory building at \$2.50, and I went and looked at the factory building, and it was the ordinary average usual factory building, I would say, "This is a building that I think the Department factor of \$2.50 should apply to." But, if the walls

were crumbling and the building falling to pieces, I would
1721 say, "Well, this is the kind of building, but not in the condition the Department assumes." If I found a fine sprinkler system and a lot of modern appliances in a building, I should say, "This is better than the Department basis." What I want to get from Mr. Cronin as a matter of fact is whether he found these buildings in Flushing to be the kind of buildings the Department gave him the factor for.

Mr. Cummings: The mere fact that the Department furnishes him these figures shows how accurate the valuations are.

The Master: It does not show that at all. If there were no factors given to Mr. Cronin he might go out and establish an entirely different factor, higher or lower than the Department factor. He might arrange in his own mind an entirely different factor altogether. But when he goes out he has with him a factor established by the Department, and that is the basis. If I were to look at a factory building, assuming that I knew something about the value of buildings, I would not be bound or influenced by a Department factor, having in mind that the Department tries to get as nearly a uniform value throughout the whole city for the same type of building as possible, and it influences the situation.

Mr. Neumann: Then it is the Master's judgment, isn't it, that such a witness is prejudiced by reason of the fact that he is given Department figures as the basis?

The Master: No, he is not prejudiced, he is influenced by it. He has got to be influenced by it.

1722 Mr. Cummings: That is a good influence. He would be influenced by the Department's figures, and also by information from the outside.

The Witness: We always look for information outside.

The Master: I have said all along that this kind of testimony is valueless in this kind of case.

Mr. Neumann: And yet you took it from Halleran.

The Master: I took it from them as I take it from you, but I am going to find what this Company has invested in this business, and I am going to throw expert testimony out of the window.

Mr. Neumann: I want to call your attention to this fact, that Mr. Halleran was one of the men who sold a piece of property to this New York & Queens Gas Company. The title papers show that.

The Master: I expressed myself in the Consolidated case about expert opinion, and I am repeating it now.

By Mr. Vilas:

Q. What factor did you use on the brick buildings here in 1917?

A. On the brick buildings for those years I used \$1.50 to \$2, and on the frame buildings from \$1 to \$1.50.

Q. What relation do those figures bear to the Department's figures?

A. About the Department figures.

Q. Was there any increase in these unit figures between 1917 and 1920?

A. No.

723 Q. Just take the year 1917 and tell us in what respect you deviated from the Department figures, and on what buildings?

A. Well, when I would find the bricks in good shape I would use \$2, or if I found them in poor shape I would use \$1.50.

The Master: What was the Department figure for a good building?

The Witness: Well, \$1.50 a square foot at that time.

The Master: For a good building?

The Witness: From \$1.50 to \$2.

The Master: That was the range, \$1.50 to \$2?

The Witness: Yes, sir.

The Master: Then you applied the Department unit?

The Witness: Yes, sir.

Q. Take the frame buildings, what was the Department's figure in 1917?

Mr. Cummings: Objected to on the ground that it doesn't make any difference what it was.

A. From \$1.00 to \$1.50.

Q. Did those Department figures change any in 1918?

A. No.

Q. Did your figures change any in 1918?

A. No.

Q. In 1917 they were a little higher, weren't they?

A. No, the same.

Q. What about 1920?

A. Well, there was a new building put up there, a brick sort of governor house that is there for 1920, and that made it extra.

Q. What unit did you use for that?

1724 A. About \$2.00 I think, it being new and in good shape.

Q. That is, you used the department figure for a new brick building?

A. Yes, sir.

Q. Did you ever make any investigation into the prices of constructing buildings of this kind?

A. A cost investigation into prices?

Q. Yes.

A. Of constructing?

Q. Did you make any study of the cost of buildings?

A. Yes, sir.

Q. Is it not a fact that the cost of buildings of the kind that are on this property had increased very much in the last four years?

A. Well, I would not say four years, I would say the last three years very perceptibly.

Q. You know that is a fact, that the cost of material and labor has increased decidedly?

A. Yes, sir.

Q. But you made no change in the unit of valuation?

A. I went to \$2.00. \$1.50 would be the ordinary case; there was no finish inside.

Q. You are speaking now of the boiler house?

A. Yes, sir.

Q. Didn't you appraise a frame dwelling house there?

A. Yes, sir.

Q. Did you make any change in your valuation of that during the last three years?

A. No.

Q. You made no change?

A. No, but I intend to for 1921, because they are getting great prices for those buildings.

1725 Q. During all the four years you testify to, your appraisal of the dwelling house was the same?

A. Yes, sir.

Q. Although you do know that the costs have been mounting steadily for at least the last three years on that class of building?

A. Yes, sir.

Q. Now, going for a moment to the question of unimproved land, did you tell us that you were ever in the real estate business?

A. I was.

Q. During what years?

A. Well, previous to entering into the department, and all along I keep in the real estate line. My father was in it and I was in it too.

Q. How long have you been in the department?

A. Since 1898, since consolidation, 22 years.

Q. How old were you then? Tell us the date of your birth and we will figure it ourselves.

A. 1863.

Q. You were born in 1863?

A. Yes, sir.

Q. And you went into the department in 1898?

A. Yes, sir.

Q. Then you were about 35 years old when you started?

A. Yes, sir.

Q. Prior to that time you were in the real estate business?

A. Yes, sir.

Q. And were you in that all your life up to the time you went into the department?

A. Up to the time I went into the department?

Q. Yes.

A. After leaving college I was with a builder, William B. Pettus, since deceased. We used to estimate on construction work, contractors for digging cellars, etc. I started in 1898 in the department.

Q. How long were you with this contractor?

A. A year and a half.

Q. Then what did you do?

A. I was in the bookbinding line for a while with Daniel Sloat & Company.

Q. When did you get into the real estate game?

A. All my life, more or less, buying and selling.

Q. You dabbled in it from the first?

A. Yes, sir.

Q. After you got out of college?

A. Yes, sir.

Q. In what part of New York?

A. I bought on 28th Street and Tenth Avenue, and up on Tenth Avenue, West Side, 51st and 52nd Street.

Q. Your operations then were in the Borough of Manhattan?

A. Yes, sir.

Q. You were not operating in Queens?

A. No, to my sorrow. I had a right to operate in Queens, it is getting better over there in certain parts.

Q. But you didn't operate in Queens?

A. No, sir.

Q. You didn't buy or sell over there at all?

A. No, sir.

Q. When were you first assigned to any property in Queens by the Department?

A. In the Fourth Ward for the year 1916, I was assigned in 1915 for the taxes of 1916.

Q. Was that your first assignment in Queens Borough?

1727 A. Yes, sir.

Q. And then the next year you went to the Third Ward?

A. Yes, sir.

Q. And your district over there comprises the whole of the Third Ward?

A. It is divided into three sections covered by three deputies. I have a part of it that they call Main Street, Broadway, the old part of Flushing.

Q. Do you go to Whitestone?

A. I touch Whitestone, but I don't assess Whitestone.

Q. Another deputy has Whitestone?

A. Yes, sir, Douglaston and Bayside.

Q. Do you go to Douglaston and Bayside?

A. I touch on them but don't assess them.

Q. Most of your work is right in Flushing?

A. Yes, sir.

Q. Prior to the time that you went to the Third Ward you didn't have any intimate knowledge of real estate conditions in Flushing you had not made any study of that district?

A. Prior to the time I went in there?

Q. Yes, sir.

A. No, sir.

Q. When you went there were your predecessor's field books sent over to you?

A. Yes, sir.

Q. Is that the field book you have in front of you now?

A. Yes, sir.

Q. You have used the same book all these years?

A. Yes, sir.

Q. How many years back of 1917 does it go?

A. Back to 1913.

1728 Q. You had before you then the real estate values that your predecessor placed upon these properties?

A. Yes, sir.

Q. And you took that into consideration?

A. Yes, sir.

Q. Did you make any change in 1917 on the previous valuation?

A. From 1916 you mean?

Q. Yes. I am talking about real estate, unimproved, now?

A. From \$10,500 to \$12,600.

Q. You raised the figure that your predecessor had placed upon the property the year previous?

A. No, I did not raise it. I dropped two lots in there, 39 and 40 amounting to \$2,100 which, added to the \$10,500, make \$12,600.

Q. In other words, then, taking into account those two lots you speak of, your figure for 1917 was the same as the assessment 1916?

A. Yes, sir.

Q. Did you have before you any sales in arriving at your opinion as to the selling value of this property?

A. Well, there were sales and mortgages and general information.

Q. Can you give us some sales?

A. Block 167, Lot 31.

Q. Where is that with reference to this property?

A. It is right near this property.

Q. Was it across the street from it?

A. It is on what they call Converse Avenue, right near it.

Q. When was that sold?

A. It sold for \$2,000, with a mortgage of \$1,500 on it.

1729 Q. What was the size of it?

A. 25 by 125, with a two-story building on it. It is about the fairest row of houses down there.

Q. It is about two blocks from the works, isn't it?

A. Yes, sir.

Q. Are they small houses?

A. Yes, sir, 20 by 30, and an extension, two-story.

Q. Give us some more sales in the neighborhood?

A. Right in that same block, Lot 29, Block 167. That showed revenue stamps of 50 cents, which meant \$500, but I didn't get the mortgage in that case. It is about the same figure.

Q. You could not give that any consideration then, if you did not know the full sale price?

A. The same block 167, lot 23, there is a purchase money mortgage of \$1,300 against an assessment of \$1,300. I looked that up and found out he paid somewhere near \$1,800 for it, which is a very fair ratio in that poor neighborhood.

Q. What is the size of that lot?

A. 25.6 x 125.

Q. Any more sales in the neighborhood?

A. Block 167, lots 9 and 34, a consideration of \$1,400, mortgage \$600.

Q. What were the dimensions of that property?

A. Lot No. 9 is 25 x 125; lot 34 is 25.01 x 125.

The Master: I do not think we need any more.

Q. Just one more question on that line. The dates of these sales, were they approximately contemporaneous or were they old?

A. 1918 is what I was giving you there. That gives me a fair idea of that section.

1730 Q. Those are sales that you took into consideration in valuing this property?

A. Yes.

Q. There were also mortgages on these same pieces which you have described?

A. Yes.

Q. Did you take into consideration any leases?

Mr. Neumann: I object to that; the least is not in evidence.

The Master: It is some evidence of rental value of the property. I do not think you will find any leases over in that section.

The Witness: No; I was just trying to think.

The Master: You rarely find a lease in that particular section.

Q. What was your frontage rate on block 170; take Myrtle Avenue?

A. About \$20 on Myrtle.

Q. And Farrington Street?

A. About \$14.

Q. Did you allow anything for plottage?

A. No. In that case there, you would not allow for plottage if you were assessing that for the reason that plots are not hard to assemble there; land is plentiful. It is down near the dumps as we call it.

Q. You did not allow a larger frontage rate on the gas property than on property across the street?

A. I carried across the street less—you mean on Farrington Street?

Q. Yes.

A. Because it was undesirable to live opposite a gas works from the smell.

Q. The gas works depreciates the value of the neighboring property?

1731 A. Contiguous thereto.

By the Master:

Q. And the same thing applies to the other side of Myrtle Avenue?

A. Yes.

Q. In other words, if the gas works had not been there you would have increased the value of the property on the other side of Myrtle Avenue and Farrington Street?

A. Not only in Flushing—

Mr. Cummings: I object to that; he is testifying to the land unimproved.

A. (Continued.) It hurts property all over Manhattan as well as in Flushing.

Q. If there were no gas works on this property, the land unimproved would be the value that you gave it?

A. Yes.

Q. And the contiguous property would be worth as much as this property would be then?

A. The contiguous would be, yes.

Q. In other words, you do not add value to the gas property because it was used as a gas plant but you reduced the value of the contiguous property because of the gas plant?

A. Of the nuisance as I would call it.

By Mr. Cummings:

Q. You are testifying as to the value of the land unimproved?

A. Unimproved, yes.

The Master: I think we have got enough.

Mr. Vilas: If you are going to take the testimony it must be taken with full cross examination.

The Master: But you have had full enough cross-examination.

1732 Mr. Neumann: We think that Mr. Vilas ought to be allowed to cross-examine to the fullest extent. We would not want any question here that his right of cross-examination has been curtailed.

Now, we have a witness who will be here at 2 o'clock, who went to get his field book.

The Master: Not at 2 o'clock.

If I am to determine the fair value of this property, I have got plenty of it back to 1909.

Mr. Neumann: Your Honor will allow us to at least make the offer?

The Master: You will not do it at two o'clock.

Mr. Vilas: I cannot understand why the Attorney General who knew in April that he would have to go on with his case cannot be ready with it.

Mr. Neumann: Do you want to cross-examine any witnesses?

Mr. Vilas: I cannot tell now whether we will be ready to cross-examine or not. Before we adjourn I would like to have an opportunity to ascertain how we are fixed on cross-examination. We have Mr. Cohen to cross-examine.

The Master: Cohen will not take half an hour.

Mr. Vilas: I do not know whether he will or not.

The Master: Cohen's testimony was perfectly useless. It was simply a recapitulation of the books; there was no necessity for it.

Mr. Neumann: I must object to the Master's characterization of it at this time.

1733 Mr. Vilas: I certainly must protest against any further adjournment and postponement of this trial. We are ready to go right through with it.

Mr. Neumann: Are you ready to cross-examine the witnesses?

Mr. Vilas: I will tell you that in a short time.

The Master: Next witness.

Mr. Cummings: Our witnesses are exhausted; they will be here at 2 o'clock.

The Master: The Master announces that it is now about 12 o'clock; that he will not sit around here until 2 o'clock waiting for one witness whose testimony is of no use in this case. As I understand it, it is a deputy tax commissioner who assessed the property prior to 1909.

Mr. Cummings: Yes.

Mr. Neumann: May we not do this; may we not for the purposes of having a clear-cut ruling now offer the testimony of the deputy tax commissioner for the years which we have not proved to and including the year 1904 with the same force and effect as if the witness were here presented:

The Master: No, I will not do it that way. You ought to have the witness here.

Mr. Neumann: The witness will be here at 2 o'clock.

The Master: But I will not.

Mr. Chambers: He was here but he did not have his book with him.

The Master: And I am not going to allow cross examination of Terry when I state that the testimony offered does not in the slightest degree support a claim that the gas company did not furnish the gas required to the extent of defrauding the public or even attempting to.

1734 Mr. Neumann: To which we respectfully except.

Mr. Vilas: Your Honor will strike out the testimony?

The Master: No, I will give you some reasonable cross examination.

Mr. Goetz: All we want to show is computations.

Mr. Vilas: It will be a very short examination of Mr. Wacker.

The Master: And it will be very short for Mr. Cohen; I will answer for that. What is the use of my coming back here this afternoon when I can do something more important. My office is a wreck now.

Mr. Vilas: Can we go on tomorrow?

The Master: On what?

Mr. Goetz: Cross examination of Cohen and Wacker and finish that.

The Master: How many more witnesses are you going to have?

Mr. Neumann: I have Mr. Cohen for four more tables; they will be ready Thursday or Friday.

Mr. Goetz: If your Honor please, in all fairness to the complainant, I think that in view of the fact that the defendants are asking the indulgence of the Court in adjourning this hearing when they had previous notice of the importance and the intention of the Master to proceed with these hearings, that for the sake of expediting the conclusion of the hearings and avoiding the loss of time which will ensue, that the defendants ought to give the complainant in advance of the hearings copies of the exhibits which they propose to put in so that the complainant will as nearly as possible be ready when the witnesses are on the stand to proceed with the cross examination and conclude the trial of this case.

1735 Mr. Neumann: I will be glad to give you my exhibits if they are ready. The reason they are not ready is we have not been able to get your vouchers. I think the Master will agree and everybody that has been in this case that we have tried in every way to expedite this. We have lost no time and wasted no time.

The Master: Wait a minute. Let me get this thing clear. You are not going to offer any proof to meet Wood's testimony?

Mr. Cummings: Except the actual facts.

The Master: Except the records of the company that Mr. Neumann has put in.

Mr. Chambers: We are not going to combat Wood's hypothetical evidence by submitting a witness with hypothetical figures.

The Master: As I understand it, the record is going to stand on Woods' testimony of the actual operating results as appear from the books.

Mr. Cummings: That is right.

Mr. Chambers: On the cost of making gas.

The Master: On the cost of making gas.

Mr. Chambers: And the cross examination of Woods.

The Master: So that I will be able to give my opinion practically forthwith on that.

Mr. Chambers: Keeping in mind Woods' cross examination.

The Master: I will tell you. I am going to have a session tomorrow morning if you men can be ready to cross examine Cohen and Wacker. You can have that real estate man here tomorrow morning if you want to. I will then adjourn. You will be ready on the 16th, you say?

1736 Mr. Chambers: All ready to clean up.

The Master: Then I will adjourn it until the 16th, and as my family is away and my wife will be away by that time, I will stay here until midnight on the 16th if necessary, and we can clean up that day.

Mr. Goetz: Will your Honor make a direction about the exhibits?

The Master: In a minute. If you gentlemen will have your proposed findings ready as to what you believe the testimony has established, and hand them to me that day, I will give you my report within 48 hours, and I am going to give the other side about 24 hours to present any objections they have to it, and you will have a report by the 23rd or the 24th of June.

Mr. Neumann: I will have to except and say that I cannot make any exceptions to the findings in 24 hours.

The Master: You do not have to except to the proposed report. That is where I think you gentlemen wasted so much time. There is not any theory upon which you are to except to my findings on the ground that there is no evidence to sustain it; it is a perfectly hopeless thing. You want to say that I have made an error in computations or I have not conceived a fact correctly, or that it ought to be another fact I should find.

Mr. Neumann: I should like this. I should not like it to appear on the record that by reason of my not submitting any request to find, or by taking any exceptions to your preliminary report, that I have waived the right so far as the defendant Nixon is concerned to file any exceptions to your final report.

1737 The Master: Of course not.

Mr. Goetz: The cases distinctly hold you cannot make any exceptions to the preliminary report.

The Master: As I said in the Consolidated case, it seems to be the practice in this district or in the Federal Courts to do that. I do not believe in the practice; it is not of any real use. It does not change my views as to the ultimate fact very much one way or the other.

When will you have your four tables ready?

Mr. Neumann: By the end of this week, and I talked to Cohen later and he said on Thursday or surely by Friday.

The Master: That ought to be in the hands of counsel for the plaintiff by Friday night.

Mr. Neumann: Or Saturday morning.

Mr. Vilas: What about the Attorney General's exhibits?

The Master: Will you have any tables?

Mr. Chambers: Yes.

The Master: When will you have them ready?

Mr. Chambers: On the 16th. The Master is going to give a quick decision. I want to except to the haste in which he is deciding a very very important issue.

The Master: The stenographer might note that Mr. Chambers says that with a smile.

Mr. Chambers: He is making a grave mistake in deciding a case like this.

The Master: There is no issue as to this operating result on Woods' testimony; there is no issue, you tell me.

Mr. Chambers: Yes, there is.

1738 The Master: The fact is that the records for 1918, according to your own figures that Mr. Cohen put in the other day, show a loss of five cents a thousand cubic feet, and for the first three months of 1918—I have forgotten what the figure is for the year.

Mr. Chambers: That is an extraordinary year.

Mr. Neumann: You mean 1919.

The Master: And for 1920, the most that Mr. Cohen can work out for three months is four cents a thousand cubic feet.

Mr. Neumann: Profit. It shows a difference of nine cents per thousand cubic feet between the first three months of 1919 and the first three months of 1920.

The Master: The fact remains I have not any disputed question to consider and determine. I am taking the operating results as they appear from the books about which apparently there is no question supplemented by Woods' testimony.

Mr. Neumann: I do not see how you are going to take Woods' testimony that it takes 37 pounds of generator fuel when the records indicate much less than that, and when Woods testified in the Consolidated 32½ was the fair operating result.

The Master: I am going to handle that when I come to it, and it will not take me more than forty-eight hours to get it in shape.

We will adjourn until nine-thirty tomorrow morning.

Adjourned to Wednesday, June 9, 1920, at 9.30 A. M.

1739

NEW YORK & QUEENS GAS COMPANY

VS.

CHARLES D. NEWTON, &c., et al.

Before Abraham S. Gilbert, Special Master.

New York, June 9, 1920.

Met pursuant to adjournment.

Present:

Mr. Ransom, Mr. Vilas and Mr. Goetz, of Counsel for Complainant.
Mr. Chambers, Mr. Tobin and Mr. Cummings, of Counsel for Defendant Newton.

Mr. Neumann, of Counsel for Defendant Lewis Nixon, Public Service Commissioner.

THOMAS WALSH, called as a witness on behalf of the Defendants, being duly sworn, testified as follows:

Direct examination.

By the Master:

Q. Where do you live?

A. Jamaica, Long Island.

Q. You are a deputy tax commissioner?

A. Yes, sir.

Q. And have been for how many years?

A. 20 or 22 years.

Q. You went in before the civil service?

A. No, I went in under the civil service.

Q. You were taken from the civil service list?

A. Yes, sir.

Q. You passed the examination?

A. Yes, sir.

1740 Q. What was your business before you became a deputy tax commissioner?

A. Clerk.

Q. In the Tax Department?

A. No.

Q. What line of business?

A. Wholesale dry goods.

By Mr. Cummings:

Q. Were you assigned to the district in Queens in which is located property of the New York & Queens Gas Company?

A. Block 171?

Q. Yes.

A. Yes.

The master: Block 171 and Block 170?

The Witness: Yes, sir.

Q. During what year were you assigned to that district?

A. 1904 I think.

Q. Just the one year.

A. One year.

Q. Did you visit the property that year with the idea and for the purpose of fixing its value?

A. Yes, sir.

Q. And after you fixed such value you made a sworn statement did you of all the taxable property in your district?

A. I did.

Q. Of the valuations placed on this particular property?

A. Yes.

The Master: What do you carry this property on the books at?

Mr. Vilas: \$55,000.

Mr. Cummings: Halleran swore to \$55,000.

1741 Mr. Neumann: \$55,000. is what they have it on the Miller schedule and on the Teele schedule.

Mr. Vilas: Teele hasn't got that on his schedule at all; it is on the Miller schedule.

The Master: I don't care about that. What is the actual book cost?

Mr. Vilas: I cannot answer that offhand. I can tell you when Mr. Spear gets here.

The Master: The impression in my mind is this: You are going to have Mr. Walsh, as you have had other witnesses, say that it is not worth anything to speak of.

Mr. Cummings: We are going to have him swear what in his opinion is the fair value of it.

The Master: Mr. Halleran swore that it is worth \$50,000 or \$55,000. In my opinion it is worth less than Halleran says it is, and it is worth more than these other witnesses say. They carry it on their books at \$44,000., do I understand?

Mr. Neumann: Where is the book entry. They ought to show us the book entry.

The Master: The books are in evidence.

Mr. Neumann: They should point it out.

The Master: I have got to guess in the last analysis what it is worth. It is perfectly absurd for me to guess at anything like this.

Mr. Cummings: I don't know how you can get any more reliable information. I would testify myself if you would believe me.

Mr. Vilas: That is a situation that often arises where the value of property is in question.

1742 The Master: Some of this property has been bought and paid for in cash?

Mr. Vilas: Yes, in 1904, and that appears on the books.

The Master: How much was that?

Mr. Cummings: Of course your Honor understands that it is

necessary for the complainant to prove the value of this property beyond any reasonable doubt.

The Master: Mr. Spear, let me ask you, how much of this property was bought since 1904?

Mr. Spear: That was bought in about 1914.

The Master: How much was paid in cash for property that you bought after 1904? Unless I can reach a conclusion on this point now I am going to let Mr. Walsh's testimony go in, but I may make a ruling on it now as to what I shall find. If they actually paid an amount which represents in proportion \$40,000 for the entire property, I am going to make a ruling now that that is going to be the figure which I shall find.

Mr. Neumann: To which of course we will respectfully except.

The Master: You will have the finding to except to.

Mr. Spear: Since 1908 we paid \$20,630.90.

The Master: Which lot did you buy? I am going to withdraw Mr. Walsh for a minute and recall Mr. Spear.

43 MAYNARD H. SPEAR, recalled by the Master.

Mr. Cummings: We make an objection to the Master trying the case.

By the Master:

Q. When did you buy this piece, 50 by 125, on Farrington Street?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial and not the proper way to prove it.

Mr. Cummings: I make an objection to all of it.

The Master: Objection overruled.

Mr. Cummings: Exception.

Mr. Neumann: Exception.

A. In 1914 or 1915?

Q. What did you pay for that?

A. This cost us a little over \$5,000.

Q. That one plot, 50 by 125?

A. Yes; there was a house on it.

Q. That you tore down?

A. Yes, we moved that house over on this side (indicating). In case there were some minors, and we had to buy a lot——

Q. That is not the house you have on the north side of 31st Street?

A. This plot here cost about \$8,000.

The Master: The witness refers to the southwest corner of Center Street or 31st Street and Farrington Street, 150 feet on the street and 50 feet on Farrington Street, and running back into an L.

Mr. Neuman: I move to strike out that answer on the ground that the figures are easily ascertainable, and since we have to guess we ought to have something substantial to guess upon, and not the witness' guess.

44 Q. What other pieces did you buy?

A. The piece just south of that.

Q. That is that piece 50 by 125?

A. Yes.

Q. For which you paid \$5,000?

A. Yes. Then, the northwest corner of Myrtle Avenue and Farrington Street, the plot just west of it, 50 by 75; and the piece north of those two, 25 by 100; the piece north of that, 25 by 100; the piece north of that 25 by 100, in about 1912.

Q. For about how much?

Mr. Neumann: Do the books show it?

Q. Isn't there a journal entry that shows exactly what you bought in 1914?

A. Yes.

Mr. Vilas: These deeds, beginning with Exhibit 38, will show the property acquired since 1904.

Mr. Cummings: I object to that upon the ground that the consideration recited in the deed is *prima facie* evidence of the payment of that consideration, and that this evidence is in dispute of one of their own exhibits, and I take an exception if your Honor overrules me.

The Master: You can have the exception all right.

Mr. Neumann: Exhibit 38 indicates that for that plot they paid \$300.

The Master: What plot is that?

Mr. Neumann: That is parts of Nos. 20 and 21—

The Master: That is a different number from the tax map. I am going to find out what this property is worth based upon what was actually paid for it.

1745 Mr. Vilas: It is all in evidence, and I will be glad to work it out for you.

The Master: Well, let us work it out right now.

Mr. Neumann: I would like to call your Honor's attention to Complainant's Exhibit 43, which is the deed from Halleran to this company.

Mr. Vilas: He is not the grantor in that deed. I don't know of any deed of which Halleran was the grantor.

Mr. Neumann: He was the Secretary of the Flushingside Realty Company, and it recites a nominal consideration.

Mr. Vilas: That was not the Halleran that testified here. What was his name?

Mr. Neumann: Thomas A. Halleran.

The Master: I think the witness Halleran said it was his brother.

Mr. Vilas: I think he did.

Mr. Neumann: Some of these deeds have the actual consideration in them. Exhibits 38 to 42 contain the actual considerations.

Mr. Cummings: Those that do not contain the actual consideration have affixed thereto the cancelled stamps showing the consideration, and I submit that that is the best evidence of actual value, the recitals in the deeds and the stamps.

Mr. Neumann: All of this testimony now tends to impeach their own exhibits.

Mr. Vilas: Nonsense.

Mr. Neumann: You may think it is nonsense now, but you may get in some other court.

Q. In Ledger No. 3, page 5, I find an account, "Land devoted to Gas Operations," that shows a balance of \$20,630.90. What does that figure represent?

A. The land purchased since 1908.

Q. The balance of it was in fixed capital? The land and plant?

A. Yes, the land and plant was in the fixed capital prior to 1908.

Mr. Vilas: That is in accordance with the uniform system of accounts.

Mr. Neumann: I move to strike out the gratuitous testimony of the witness Vilas.

Mr. Vilas: I will admit it is gratuitous, I am not getting anything for it.

Q. You get at the fixed capital account as real estate and buildings, it is all one lump sum?

A. Yes.

Q. Can you tell me this: On page 2 of this Ledger 3, fixed capital, December 31, 1908, including real estate and buildings, ninety-three thousand dollars and odd; what land did the company own at that time?

Mr. Neumann: The deeds show that, if the Court pleases. The claim of title they have put in indicates that, without any characterization by the witness. I object to it.

The Master: The witness, in answer to my question, has pointed out a line beginning on the easterly side of Byrd's Alley, running thence in a northerly direction across Center Drive or 31st Street to a point north of it, taking in a sort of gore in what was designated as Lot 43 in Block 171; running thence from the northerly point of the court in a southeasterly or southerly direction down to the south side of Center Drive; thence east to a point 150 feet west of 157 Farrington Street; then south 147.54 feet as shown on the tax maps, to what would seem to be the middle line of the block; thence east 25 feet; thence south 25 feet; thence east 25 feet; thence south 175 feet to the north side of Myrtle Avenue; thence westerly on Myrtle Avenue to the point of beginning.

Mr. Cummings: I object, on the ground that the description in the deeds should be taken and not the tax map.

Mr. Neumann: I move to strike that out on the ground that it is incompetent, irrelevant and immaterial, not the proper way of proving it, and impeaches their own records. The description, if any, should be obtained from the deeds already put in evidence rather than from the tax map of the City of New York.

The Master: Objection overruled.

Mr. Neumann: Exception.

The Master: I am accepting Mr. Spear's testimony as an aid to the Court in defining the lines as they should appear by the exhibits in evidence.

Mr. Cummings: We except to that upon the ground that the description in the deeds clearly shows the boundaries.

The Master: I shall check up the boundaries as nearly as I can. Some of them apparently refer to filed maps that are not in evidence. I think the testimony of Mr. Spear is useful as supplementing these boundary descriptions and indicating the lines.

Mr. Cummings: I object to it and suggest that the maps referred to in the conveyances be put into evidence.

1748 The Master: Now, the record shows that since December 31, 1908, this complainant company has actually expended \$20,630.90.

Mr. Neumann: I respectfully except to that and say that the record does not show that, that the Ledger, Defendants' Exhibit A-2, on page 5, would indicate that.

The Master: I understood Mr. Spear swore to that.

The Witness: That is right.

Mr. Vilas: If I may interrupt, perhaps I can shorten this by the aid of Exhibit 96, which is in evidence and spread upon the record.

Mr. Neumann: That is Reproduction Cost.

Mr. Vilas: The additions per the books since 1904. It is the same amount which the Master just read.

The Master: The record shows at this point that the land purchased since December 31, 1908, cost this company \$20,630.90.

Mr. Neumann: To which we respectfully except.

The Master: The land purchased since December 31, 1908, is almost one-half of the entire tract, as I study the map. As I see it, it is somewhat less than one-half of the entire tract.

Mr. Neumann: To which we respectfully except, because there is nothing that now appears on the record from which that inference can be drawn.

The Master: As I understand it, counsel for the complainant claim that the value of the property at this time, and for
1749 some years prior to the war, was approximately \$55,000.

Mr. Vilas: Yes.

The Master: Where did I get the figure of 42,000, or something like that?

Mr. Vilas: \$44,000—you asked me what we were carrying the property on the books at at the time, and that is the amount that shows on the books.

The Master: Where does it show on the books?

The Witness: On the tax maps—we report that as the value of the land.

The Master: You report in the tax reports the value as \$41,000?

The Witness: Yes.

The Master: Is that report in evidence?

Mr. Vilas: Yes, Mr. Tobin put that in.

Mr. Neumann: Do you mean the report to the State taxing authorities?

The Witness: Yes.

Mr. Vilas: It is Exhibit L.

The Master: In other words, the complainant company, as

against the testimony of the witness Halleran that the value for some years back and at this time is \$55,000, has reported to the State taxing authorities that the value of this land for 1919 was \$44,000.

Mr. Vilas: The complainant however does not recognize that report made to the taxing authorities of values are binding upon it, even as admissions against interest.

The Master: It is not binding, but it reflects something with reference to the judgment of the officers as to values. Now, 1750 as against these figures reported by the complainant company to the taxing authorities, and the testimony of Halleran, we have the undisputed proof at this time that the property purchased since December 31, 1908, was approximately \$20,000. As I have already stated, that is somewhat less, as I read it, than one-half the property. As against this the defendants up to this point have introduced the evidence of tax officials of the City placing a value on this property for the years since 1909, unimproved—

Mr. Cummings: When they bought this there were buildings on some of this land.

The Master: Yes, but they were of no value to them and they had to remove them.

In order to make the record, if Mr. Vilas interposes an objection to the testimony now being offered by Mr. Walsh, I shall sustain the objection on the ground that further testimony of this character is unnecessary in this case; that on the record as it stands, unless further evidence is introduced by one side or another, my finding will be that the fair value, fair average value of this land prior to the year 1919 was and still is \$44,000.

Mr. Neumann: To which we respectfully except.

Mr. Cummings: Exception.

The Master: Suppose you come back, Mr. Walsh, and you ask the question.

1751 THOMAS WALSH resumed.

By Mr. Cummings:

Q. Mr. Walsh, will you please state the sum for which in your judgment each separate parcel of land now owned by the New York & Queens Gas Company under ordinary circumstances would sell if wholly unimproved as of the year 1904?

Mr. Vilas: I object to that on the grounds set forth at length with reference to the witness Dede yesterday, and upon the additional ground that the testimony is far too remote to have any bearing.

The Master: The objection is sustained upon the grounds already stated by me on the record. I do not think we need any more testimony of deputy tax commissioners as to values in this case.

Mr. Cummings: Exception.

Mr. Neumann: Exception.

The Master: All right, Mr. Walsh, you are excused.

Mr. Cummings: I would like to ask him another question.

Q. Did you also fix a valuation upon the land as improved?

A. I fixed a valuation on the entire property, both land and with the improvements thereon.

Q. The valuation as unimproved and the valuation as improved?

A. The final assessment is fixed as improved.

Q. Will you now state to the Court the value which you fixed upon that property as improved property?

Mr. Vilas: I object to that upon the grounds already stated.

1752 The Master: Objection sustained.

Mr. Cummings: Exception.

Mr. Neumann: Exception.

The Master: That is all, Mr. Walsh.

Mr. Neumann: The witness is now offered for cross examination.

Mr. Cummings: I want to cross examine Mr. Spear.

Mr. Vilas: I object to his cross examining him.

The Master: Go ahead.

Mr. Vilas: Over my objection and exception.

The Master: Yes.

MAYNARD H. SPEAR recalled.

Cross-examination.

By Mr. Cummings:

Q. The record here shows that in 1911 the New York & Queens Gas Company purchased a parcel of land from Elizabeth J. Kirby. Do you know the actual amount of money paid for that land by your company, of your own knowledge?

A. I did know it, but I can't recall it from memory now.

Q. Is there any way in which you can refresh your memory as to that? Is there any book here or memorandum of any kind from which you can refresh your memory and state the actual consideration paid for that piece of property?

A. Yes, I think I can locate it in the books, but it may take some little time.

Q. I am going to ask you about a lot of them, each one separately.

1753 The Master: Mr. Spear can look that up.

A. Don't the deeds show that?

Q. The ones I am asking you about the deeds do not show.

The Master: I do not think that this cross examination will be helpful. Mr. Miller offered in evidence an exhibit in which reference is made to particular ledgers and pages and deeds and showing the acquisition of various lots. Now, what year was that, 1911?

Mr. Cummings: In 1911 the record shows it purchased a parcel of land from Elizabeth J. Kirby.

The Master: Exhibit 96 shows that the lots purchased in 1911 were purchased for \$5,800, and there was expended for title insurance, \$101.25, making a total of \$5,901.25.

The Witness: That would include, I think, in that same year more than the Kirby tract.

Mr. Cummings: I am asking as to each one separately.

Mr. Neumann: That shows the utter unreliability of their exhibit, trying to match it up with the testimony.

The Witness: I would like to say, your Honor, that it will save time if at the next hearing I submit a map showing the different plots, with the name of the grantor, and the amount actually paid.

The Master: Bring in at the same time, Mr. Spear, such original records as you are able to locate, confirming your statement as to the map that you bring in.

The Witness: All right.

Mr. Cummings: That is all right.

1754 Mr. Neumann: I have a question of Mr. Spear on another matter. I will ask complainant to produce certified copy of the minutes that I asked for.

Mr. Vilas: Unfortunately each one is not certified, but they are initialed and I have his certificate that the whole bunch——

Mr. Neumann: As I understand it, you were not going to make any objection that the original minutes were not offered, or that Mr. Maynard was not called as the Secretary.

The Master: Mr. Vilas represents that that is an accurate copy of the resolution. You can assume it is certified, or anything else.

Mr. Neumann: I offer that resolution in evidence.

Mr. Vilas: I object to it is immaterial and irrelevant, having no bearing upon the issues of the case, upon any issue raised by the pleadings.

Mr. Neumann: You pleaded that that stock was duly issued and authorized.

Mr. Vilas: Yes.

Mr. Neumann: We took issue with you on that point.

The Master: What has the opinion of Krauthoff, Harmon and Mathewson got to do with it?

Mr. Neumann: That is proof that they did not get the authorization.

The Master: It is admitted that they did not get an order at that time.

Mr. Neumann: No, it is not as yet. We ought to have the facts.

Mr. Vilas: It was admitted on the record that there was no order of the Commission.

1755 The Master: Objection sustained upon the ground that this is of no value in this case, and is immaterial.

Mr. Neumann: Exception. I ask that it be marked for identification.

Paper marked Defendants' Exhibit A-70 for Identification.

Q. Mr. Spear, I show you a letter dated November 9, 1910, on the stationery of the New York & Queens Gas Company, purporting to be signed by its treasurer. Do you recognize that signature?

A. I do.

Q. Whose signature is that?

A. H. L. Snyder.

Q. Was he the Treasurer of the New York & Queens Gas Company at that time?

A. He was.

Mr. Neumann: I offer that letter in evidence.

The Master: How is that material?

Mr. Neumann: That is material on a point that I am going to develop about this \$66,000 worth of bonds, in connection with these reports.

Mr. Vilas: I do not see where it is material. It is objected to.

The Master: I will take it. Mr. Neumann says he is going to connect it with something.

Paper received in evidence and marked Defendants' Exhibit A-7.

Mr. Neumann: I might state for the record now that the information contained in this letter is the same information that is attached to these slips that are part of page 30 of the reports of this company for the year 1909, which I have previously offered in evidence.

Mr. Goetz: And for the information of the Court I would say that the slip was attached by the Public Service Commission without any authorization from the complainant company.

The Master: I understand that the slip to which Mr. Neumann refers, and other slips of similar character, are placed on these reports by the Public Service Commission upon the authority of communications received by the Public Service Commission from the complainant company.

Mr. Neumann: That is right. The identical information contained on these slips is in this letter that I have just introduced in evidence.

Q. Now, Mr. Spear, I show you the report of the New York Queens Gas Company to the Public Service Commission of the First District for the year 1909, and direct your attention to page 30 which has already been placed in evidence, and the number of which I do not now recall, and I particularly direct your attention to the explanation following the letter G in brackets at the head of page 30 which reads: "The par value of the amount of authorized issue as authorized by the Public Service Commission, the Commission of Gas and Electricity or other public authority of the State of New York." Do you see that?

A. That.

Q. And that refers to column G under it where it is stated "value of authorized issue," is that correct?

A. It is.

1757 Q. Now, this amount here right underneath that, the wording is, "\$1,000,000", is it not?

A. It is.

Q. Do you intend the Court to believe that that \$1,000,000 is the authorized issue by the Public Service Commission or any other public authority?

Mr. Vilas: I object to that question as incompetent, irrelevant and immaterial. It does not appear that the witness asks the Court to believe anything.

The Master: When were these bonds authorized?

The Witness: In 1904.

The Master: Was there any public authority that had jurisdiction over the issuance of bonds in 1904?

The Witness: I don't know; that is a legal question.

Mr. Goetz: If your Honor please, the public authority was the legislature itself which prescribed under what conditions it might be done.

Mr. Neumann: This is very important.

The Master: What I want to get clear on the record is this——

Mr. Goetz: There was no commission at that time.

The Master: Is it conceded by all counsel that when these bonds were dated or authorized by the company to be issued, on August 1, 1904, there was no statute requiring the submission of the matter to a public authority?

Mr. Neumann: There is no proof here that these bonds were authorized and issued in 1904. There is no proof here who authorized them, the company or anybody else, or when they issued them.

The Master: Mr. Spear testified that these bonds were authorized and issued August 1, 1904, and delivered to the Trust Company at that time.

Mr. Neumann: No, that was not his testimony.

The Master: Do I recall your testimony correctly?

The Witness: Yes.

Mr. Neumann: His testimony was that in 1909 they issued \$66,000 worth of bonds to take up a note of \$60,000. I want to call your Honor's attention to two things in connection with that——

The Master: Just wait a minute. Don't try to confuse the record. I understand the testimony to be that the New York & Queens Gas Company on August 1, 1904, actually issued, pursuant to a resolution of the Board of Directors——

Mr. Neumann: That resolution is not in evidence.

The Master: I don't care whether it is or not. They issued a million dollars' worth of bonds and delivered them to a trust company. Is that correct?

The Witness: Yes, sir.

The Master: The bonds lay there, \$750,000 of them being issued or put out by the trust company at or about that time?

The Witness: That is right.

The Master: That left \$250,000 of bonds in the trust company, is that correct?

The Witness: Yes.

1759 The Master: And they were there in 1909?

The Witness: Yes.

The Master: And in 1909 the testimony is that they took these \$66,000 of bonds out and sold them.

Mr. Neumann: \$66,000.

The Master: \$66,000 of bonds out and sold them and used the proceeds to take up the loan of the trust company, the note.

The Witness: Let me correct that. The Lincoln Trust Company were trustees under the mortgage. They had \$66,000 of our bonds as collateral for loans. We didn't have any money to take up that loan, and the Lincoln Trust Company sold those \$66,000 of bonds to take up that loan and paid us the difference.

The Master: That was with your consent and co-operation?

The Witness: That is right.

The Master: That was by arrangement with your company?

The Witness: Yes.

The Master: When that was done, as I understand it, no application was made to the Public Service Commission? Is that correct?

The Witness: That is right.

Mr. Neumann: Now, I call your Honor's attention to Section 69 of the Public Service Commission Act, the part that I have marked with pencil, and if your Honor wishes I will read it right into the record.

The Master: No, just call my attention to it.

1760 Mr. Goetz: I can clear that by one question.

Mr. Neumann: You are not going to take this witness out of my hands at the present time.

Mr. Goetz: I call the Court's attention to this fact. The loans to which the Court referred were all loans made by the Lincoln Trust Company to the New York & Queens Gas Company, and the deposits of collateral were all deposits made between January 22, 1906, and June 25, 1907, before the Public Service Commission Act went into effect.

Mr. Neumann: Will your Honor read that part that I have marked there with a pencil?

The Master: That is in accordance with the letter that Mr. Neumann has offered in evidence, is it?

The Witness: Yes.

Mr. Neumann: I have offered that letter. It shows that from February 1, 1908, the balance due was \$60,000, and that that loan was renewed from time to time.

The Witness: Also it shows that the first loan was made January 22nd and the last loan on June 25th, 1907.

Mr. Neumann: That is right. I am not trying to confuse the facts.

The Master: Does the witness state that when these notes were delivered to the Trust Company at the time stated in his exhibit that simultaneously therewith bonds were deposited with them as collateral?

The Witness: I do not know that positively, but I do know that the bonds were up as collateral prior to 1908.

1761 Mr. Neumann: Don't you see, if the Court please, here is the situation. Any company could come here at any time and get from under the regulation of the Public Service Commission by some witness stating that according to his best recollec-

tion the bonds were issued prior to the time that the Act went into effect. That is not proof of it. On a point of that kind the Court ought to be satisfied beyond a reasonable doubt that these funds were issued. If these were authorized by a resolution of the Board of Directors it is easy enough to prove it.

The Master: The record is made; go ahead.

Mr. Neumann: I now ask leave to read that part of Section 69 right into the record at this point.

The Master: No; it is not necessary.

Mr. Neumann: Exception.

Mr. Goetz: I object on the ground that there is a misstatement made. The law to which Mr. Neumann referred was not the law which was in effect at the time this transaction took place.

The Master: Next question.

Mr. Neumann: The record is quite clear, I think, Mr. Goetz.

The Master: Anything more from Mr. Spear?

Mr. Neumann: Yes.

By Mr. Neumann:

Q. Now, then, the total of the column, "Par Value of Authorized Issue," is what amount, Mr. Spear?

A. \$1,000,000.

1762 Mr. Neumann: That is all.

The Master: Who do you want to cross examine now?

Mr. Cummings: We want to introduce some records first.

The Master: Go ahead.

Mr. Cummings: I want to introduce the application for correction of assessed valuation of real estate and personal property made by the New York & Queens Gas Company, the application for the correction of the assessed valuation of 1917.

Mr. Vilas: We object to this on the ground that it is incompetent, immaterial and irrelevant, that it is an indirect method of getting in something which the Court ruled out yesterday; further, that it is not material or relevant or binding upon the complainant in a rate case.

The Master: Objection overruled.

Mr. Vilas: Exception.

Marked Defendants' Exhibit A-72.

Mr. Neumann: I now offer in evidence Defendants' Exhibit A-70 for Identification.

The Master: I will let my ruling stand and allow you an exception.

Mr. Cummings: I offer in evidence the report of the New York & Queens Gas Company of the City of New York to the State Tax Department of the State of New York for the year ending December 31, 1919, both the financial report and the report covering the tangible property outside of the streets, highways and public places.

Mr. Vilas: That is objected to upon all the grounds stated by Judge Ransom about Defendants' Exhibit L, when it was

1763 offered and received, and upon the additional ground that it is an indirect way of evading and avoiding the ruling of the Court made with respect to the assessment of improvements.

The Master: Objection overruled.

Mr. Vilas: Exception.

Marked Defendants' Exhibit A-73.

Mr. Cummings: I now offer in evidence the report of the New York & Queens Gas Company to the State Tax Department of the State of New York for the year ending December 31, 1917, both the financial report and the report covering the tangible property outside of streets, highways and public places.

Mr. Vilas: Same objection.

The Master: Same ruling.

Mr. Vilas: Exception. I call your Honor's attention to the fact that it has been judicially decided in many cases that such evidence is not competent or relevant in a rate case, and I object to it.

The Master: Objection overruled.

Mr. Vilas: And not binding the utility.

The Master: Objection overruled.

Mr. Vilas: Exception.

Marked Defendants' Exhibit A-74.

Mr. Cummings: I now offer in evidence report of the New York & Queens Gas Company to the State Tax Department of the State of New York for the year ending December 31, 1917, both the financial report and the report covering the tangible property outside of streets, highways and public places.

Mr. Vilas: Same objection.

The Master: Objection overruled.

Mr. Vilas: I call your Honor's attention particularly to Defendants' Exhibit A-74, the fact that there are attached to it 1764 carbon copies of letters and other letters which are no part of the exhibit.

The Master: Nothing is received except the report as filed.

Mr. Neumann: If the letters were there when the report was filed they are part of it.

Mr. Vilas: There is no evidence that they were.

Mr. Cummings: The letters probably will clear up any ambiguity in the report.

The Master: I will take the report excluding any letters or papers attached to them; I did not stop to look at them.

Mr. Vilas: That is so with all exhibits.

The Master: That is so with all the rulings.

Mr. Cummings: I submit that any additional data furnished annexed to the reports becomes a part of it, and the only purpose of having any additional data in connection with it is to clear up some ambiguity.

The Master: You will have to offer anything that you want to offer that is not the report as filed as a separate exhibit.

Mr. Cummings: Exception.

Marked Defendants' Exhibit A-75.

Mr. Cummings: I now offer in evidence the report of the New York & Queens Gas Company of the City of New York to the State Tax Department of the State of New York for the year ending June 30, 1916, both the financial report and the report covering the tangible property outside of streets, highways and public places.

Mr. Vilas: I make the same objection.

The Master: Objection overruled.

Mr. Vilas: Exception.

1765 The Master: The report as filed is received; no correspondence following it, if any there be.

Mr. Neumann: I call the Court's attention to the fact that there is correspondence here signed by Mr. Raynor and Mr. Spear. Under those circumstances I will have to ask that both of those gentlemen be produced.

Marked Defendants' Exhibit A-76.

Mr. Cummings: I now offer in evidence the report of the New York & Queens Gas Company to the State Tax Department of the State of New York for the year ending December 31, 1916, both the financial report and the report covering the tangible property outside of streets, highways and public places.

Mr. Vilas: I make the same objection.

The Master: Objection overruled.

Mr. Vilas: Objection.

Marked Defendants' Exhibit A-77.

Mr. Cummings: I now offer in evidence report of the New York & Queens Gas Company to the State Tax Department of the State of New York for the year ending June 30, 1915. The whole report seems to be combined in one report.

Mr. Vilas: Same objection.

The Master: Same ruling.

Mr. Vilas: Exception.

Marked Defendants' Exhibit A-78.

Mr. Cummings: I now offer in evidence the report of the New York & Queens Gas Company, Flushing, New York, to the State Board of Tax Commissioners of the State of New York for the year ending June 30, 1914.

Mr. Vilas: Same objection.

The Master: Objection overruled.

1766 Mr. Vilas: Exception.

Marked Defendants' Exhibit A-79.

Mr. Cummings: I now offer in evidence report of the New York & Queens Gas Company to the State Board of Tax Commissioners of the State of New York for the year ending June 30, 1913.

Mr. Vilas: The same objection.

The Master: Objection overruled.

Mr. Vilas: Exception.

Marked Defendants' Exhibit A-80.

Mr. Cummings: I now offer in evidence the report of the New York & Queens Gas Company to the State Board of Tax Commissioners of the State of New York for the year ending June 30, 1912.

Mr. Vilas: I make the same objection.

The Master: Objection overruled.

Mr. Vilas: Exception. I also add the objection that it is too remote to have any bearing on the issues in this case.

The Master: Objection overruled.

Mr. Vilas: Exception.

Marked Defendants' Exhibit A-81.

Mr. Cummings: I now offer in evidence the report of the New York & Queens Gas Company to the State Board of Tax Commissioners of the State of New York for the year ending June 30, 1911.

Mr. Vilas: Same objection.

The Master: Objection overruled.

Mr. Vilas: Exception.

Marked Defendants' Exhibit A-82.

Mr. Cummings: I now offer in evidence report of the New York & Queens Gas Company to the State Board of Tax Commissioners of the State of New York for the year ending December 31, 1910.

1767 Mr. Vilas: Same objection.

The Master: Objection overruled.

Mr. Vilas: Exception.

Marked Defendants' Exhibit A-83.

Mr. Cummings: I now offer in evidence report of the New York & Queens Gas Company to the State Board of Tax Commissioners of the State of New York for the year ending December 31, 1909.

Mr. Vilas: Same objection.

The Master: Objection overruled.

Mr. Vilas: Exception.

Marked Defendants' Exhibit A-84.

Mr. Cummings: I now offer in evidence report of the New York & Queens Gas Company to the State Board of Tax Commissioners of the State of New York for the year ending December 31, 1908.

Mr. Vilas: Same objection.

The Master: Objection overruled.

Mr. Vilas: Exception.

Marked Defendants' Exhibit A-85.

Mr. Cummings: I now offer in evidence report of the New York & Queens Gas Company to the State Board of Tax Commissioners of the State of New York for the year ending December 31, 1907.

Mr. Vilas: Same objection.

The Master: Objection overruled.

Mr. Vilas: Exception.

Marked Defendants' Exhibit A-86.

Mr. Cummings: I now offer in evidence report of the New York & Queens Gas Company to the State Board of Tax Commissioners of the State of New York for the year ending December 31, 1906.

Mr. Vilas: Same objection.

The Master: Objection overruled.

1768 Mr. Vilas: Exception.

Marked Defendants' Exhibit A-87.

Mr. Cummings: I now offer in evidence report of the New York & Queens Gas Company to the State Board of Tax Commissioners of the State of New York for the year ending June 30, 1905.

Mr. Vilas: I make the same objection.

The Master: Objection overruled.

Mr. Vilas: Exception.

Marked Defendants' Exhibit A-88.

Mr. Cummings: I now offer in evidence report of the Newtown & Flushing Gas Company to the State Board of Tax Commissioners of the State of New York for the year ending June 30, 1903.

Mr. Vilas: That is objected to upon the grounds previously stated and upon the additional ground that it is in no way binding upon the complainant company, made by another company, not a party to this record.

The Master: Objection sustained.

Mr. Neumann: Your Honor admitted the 1904?

The Master: Because it was made by the New York & Queens.

Mr. Cummings: I submit that any statements that are made in any of these reports by a predecessor are binding upon the successor.

The Master: I will not take that; I took the 1904 because the report was made by the New York & Queens for the Flushing company.

Mr. Neumann: To get the record clear, the objection is not made to this by reason of the fact that it is not properly proven so far as signature is concerned.

1769 The Master: I assume that it is an original record properly filed in the State Department, the signatures are correct, and if all those elements were proved I should still make the same ruling.

Mr. Cummings: I also desire to call the Court's attention to the fact that it is a public record, admissible in evidence upon that ground alone.

The Master: Yes; if material to the issue.

Mr. Vilas: The complainant by its silence does not mean to be taken as conceding that the signatures are correct or that it knows anything about the report.

Mr. Cummings: I ask to have it marked for identification.

Marked Defendants' Exhibit A-89, for Identification.

Mr. Cummings: I now offer in evidence report of the Newtown & Flushing Gas Company to the State Board of Tax Commissioners for the State of New York for the year ending June 30, 1902.

Mr. Vilas: Objected to upon the grounds previously stated with reference to the previous offer.

The Master: Objection sustained.

Mr. Cummings: Exception: I ask to have it marked for identification.

Marked Defendants' Exhibit A-90, for Identification.

Mr. Cummings: I now offer in evidence report of the Newtown & Flushing Gas Company to the State Board of Tax Commissioners of the State of New York for the year ending June 30, 1901.

Mr. Vilas: Same objection.

The Master: Objection sustained.

1770 Mr. Cummings: Exception; I offer it for identification.

Marked Defendants' Exhibit A-91, for Identification.

The Master: I think you have got enough on that line.

Mr. Cummings: I have just one more.

The Master: But I do not want any more.

Mr. Cummings: I will make the offer.

The Master: I do not want you to.

Mr. Cummings: Then let it be noted that I am willing—

The Master: You want to offer them back how far?

Mr. Cummings: To 1900.

The Master: I decline to recognize anything further back: I think the record is complete on that line.

Mr. Cummings: Exception.

Mr. Neumann: I should like to clear up these reports with Mr. Spear if he will take the stand.

MAYNARD H. SPEAR recalled on behalf of the defendants.

Mr. Neumann: Do you want me to prove the signatures on these or do you concede that they were signed by an officer of the company?

Mr. Vilas: As to what; the reports?

Mr. Neumann: Yes.

Mr. Vilas: They were attested by a notary.

1771 Mr. Neumann: Yes.

The Master: You need not waste any time.

Direct examination.

By Mr. Neumann:

Q. I now show you Defendants' Exhibit A-74. In that exhibit on separate sheets there will be found a card—

The Master: It is not with the exhibit, attached to that exhibit?

Mr. Neumann: Attached to that exhibit.

The Master: Not part of the exhibit under the ruling of the Master.

Mr. Neumann: Until properly identified.

The Master: They are not part of the exhibit.

Mr. Neumann: Forms of report for the year ending December 31, 1918.

Q. (continued). Do you recognize the signature of Mr. Raynor there?

Mr. Vilas: I object to that as incompetent, immaterial and irrelevant.

The Master: Objection overruled.

Mr. Vilas: Exception.

A. Yes; on that card.

Mr. Neumann: I offer that card in evidence.

Mr. Vilas: That is objected to; it has no bearing on this case.

Mr. Neumann: I offer all of this correspondence; it is all connected up. The same thing is right there.

The Master: Objection sustained; it is a perfectly useless paper. It is simply an admission of the receipt of the forms from the department.

Mr. Neumann: Exception.

1772 By Mr. Neumann:

Q. I now show you a letter on the stationery of the New York & Queens Gas Company dated October 7, 1909, and will ask you to state whether you recognize the signature contained therein?

A. I do.

Q. Whose signature is it?

A. It is mine on the letter dated October 7, 1919.

Mr. Neumann: I offer that letter in evidence. It is sworn to as a matter of fact before a notary public.

Mr. Cummings: That is part of the report.

The Master: I will take it as a separate exhibit.

Mr. Cummings: All of it is supplemental to the report and becomes a part of the report. The report is not a final report until it is finally accepted by the State Tax Commission.

The Master: You have looked through the correspondence.

Mr. Vilas: All but the last letter.

Mr. Neumann: That is simply a summary.

Mr. Vilas: You are not going to offer that?

Mr. Neumann: No.

The Master: See if you cannot concede that the letters bound into the report shall not be taken under the same ruling.

Mr. Vilas: In so far as the letters written by the complainant company I raise the same objection that I did to the admission of the report itself.

The Master: Is there any objection to my ruling standing
1773 as to the correspondence between the reporting company and
the department being explanatory of the report and con-
sidered part of it under the same ruling, reserving the same right?

Mr. Vilas: No.

The Master: Let the record show that wherever in these reports
there is correspondence between the department and the reporting
company bound into the report, that they will be taken as part of
the exhibit under the same ruling and the same exception being re-
served to the complainant company.

Mr. Neumann: That applies to all of them.

The Master: To all of the reports.

Mr. Vilas: But it does not apply to any memorandum sheets.

The Master: I do not think that you will have any trouble
about it.

Mr. Cummings: While Mr. Wacker was away on his vacation
there were one or two other gas inspectors there, and I understand
that that report showed that one or two other gas inspectors made
some inspections. Do I understand that you are willing to stipulate
about that?

Mr. Vilas: We will not require their production.

The Master: As I understand the stipulation it is that if these in-
spectors were produced they would testify in substance that they did
the things that Wacker said they did, and made the reports and made
the tests that are offered in evidence, and that I can receive, all of
the sworn reports and test sheets in evidence for the years 1916 in-
clusive, down to and including the month of May, 1920.

Mr. Neumann: Right.

1774 ROBERT A. WACKER recalled.

Cross-examination.

By Mr. Vilas:

Q. Mr. Wacker, you testified in the Consolidated Gas case, did
you not?

A. Yes.

Q. Early this spring or the late winter?

A. Yes, I think about that time.

Q. And you testified that you had made some tests, I think, at
79th Street during 1918?

A. Yes.

Q. That was during the period—

A. I made tests there for the Consolidated; just what year I do
not recall, I guess it was 1919.

Q. That was during the period that you were assigned to Flush-
ing, was it not?

A. I could not say positively.

Q. You testified, did you not, that you had been at Flushing
since 1916 continuously?

A. Practically continuously, yes, in a practical sense, but there were times when I was taken away.

Q. There were times when you made tests at other places?

A. Yes.

Q. Now, the testing station at Flushing is in the second story of the building, in the location you have described?

A. Yes; it is on Boerum Avenue and Madison Avenue.

Q. What sort of a building is it, frame or brick?

A. It is a frame building.

Q. And how many stories high is it, is it a two-story building?

A. Two-story building, yes.

Q. Is the building heated?

A. Yes.

Q. How?

A. Steam heat.

Q. Do you know where the risers enter the building?

Mr. Neumann: That has already been gone over on direct examination.

The Master: Not that particular question; objection overruled.

Mr. Neumann: Exception.

A. Yes, I mentioned that; I said it came in through the cellar on the Boerum Avenue side.

Q. Is the cellar heated?

A. I do not know definitely. In so far as the boiler that heats the steam heating plant is down in the cellar, I assume it ought to be heated.

Q. The heating plant is in the basement of the building?

A. Yes, I believe it is.

Q. Are you sure of that?

A. No, I am not.

Q. It is a fact, is it not, that steam heat has been in that building only about a year?

A. It is not a fact.

Q. How long has it been there?

A. The steam heating plant has been in that building, to my knowledge, as long as I have been there.

Q. You mean to say that that building has been heated by steam all the time you have been assigned there?

Mr. Neumann: The witness said it was his recollection.

A. To the best of my knowledge and belief, yes.

Q. There is a butcher shop underneath, is there not, on the ground floor of the building?

A. Yes.

Q. Any other stores?

A. No.

Q. Where do the risers from which you take the gas that you test come up through the building to the second story?

Mr. Neumann: He has already testified about that.
The Master: I will allow him to testify again.
Mr. Neumann: Exception.

A. I did; I said it came up through the hall.
Q. Through the hall of the building?
A. Yes.
Q. That hall is not heated, is it?

Mr. Neumann: He said the whole building was heated. I do not see where you draw that inference.
Mr. Vilas: Your witness knows what he is talking about.
The Master: Objection overruled.
Mr. Neumann: Exception.

A. I believe it is but I would not say positively.
Q. Do you know whether there is a radiator in that hall at any point?
A. No, but I think there is a steam heating pipe that comes up through the hall, that heats the radiators.
Q. You think, in other words, that there is a riser for the steam heating apparatus coming up through the hall also?
A. I think there is, yes.
Q. Is that pipe covered or uncovered?

1777 Mr. Neumann: I object to that on the ground that it is incompetent, immaterial and irrelevant; no bearing on the issues, and the witness may not know it.
The Master: Objection overruled.

A. I would not say definitely.
Q. Did you ever see the pipe, or is there anything in your mind now and recollection of having seen a steam pipe in that hall?
A. No; I do not have any such recollection now.
Q. In testing your gas do you make any allowance for the fact that the gas passes up through the hallway in exposed pipes?
A. No.

Mr. Neumann: I object to that on the ground that it is incompetent, immaterial and irrelevant.
The Master: The witness has answered "No."

Q. In making your tests do you take into consideration the temperature of the room in which you make your tests aside from the temperature of the gas itself?

A. No, I do not take it into the calculations, the temperature of the room.

Q. You stated that you ventilated the room before you commenced a test. How do you ventilate the room?

A. I open the windows, there are two windows that face on the Boerum Avenue side in that photometer room, and I open the window in the front office there and let the air fill while I am doing other work, and then when I am ready for my test I close those windows.

Q. All windows are closed when the test is made?

1778 A. Yes. I close the windows, but in the summer I may leave them open if it does not produce a draft upon the flames.

Q. Is the door of the photometer room closed?

A. The door is, yes.

Q. In the winter, then, you close both the windows and the doors?

A. Yes, but there is one factor you overlook, that in the upper part of the room the flue pipes allow a circulation of air through that room.

Q. How large a pipe?

A. The size of the ordinary stovepipe; each end of the room there is a flue pipe.

Q. Does it go into the chimney?

A. It goes up to the chimney in one flue pipe and the other comes in from the office.

Q. How do you flush the gas; you spoke of flushing; how do you do that?

A. The photometer is situated what you might call on the main line that comes from the meter, and on the other end of the line is a burner in the front of the office. I have that burner going continuously so that there is fresh gas in that pipe, and when I light up the photometer it is simply a matter of emptying the old gas out of the photometer itself which takes no time practically.

Q. You do this every time you make a test?

A. I do what?

Q. You flush the line?

A. Oh, naturally.

Q. If the temperature of the room in which you make the test is as low as 50 degrees will not the candle power shown by the test be less than if it were as high as 65 degrees?

1779 Mr. Neumann: I object to that on the ground it is incompetent, immaterial and irrelevant. I would like Mr. Vilas to say in what room any men could work where the temperature is 50 degrees.

The Master: Objection overruled.

Mr. Neumann: You mean the temperature of the room?

Mr. Vilas: Yes.

Mr. Neumann: The question is not quite clear.

A. As to the candle power it would make no difference.

Q. The temperature of the room makes no difference in the candle power of the gas?

A. It makes no difference in corrected candle power, because the gas temperature would be the same, it would be compensated for by corrections.

Q. You mean that the gas temperature would be the same as the room temperature?

A. It would, whatever the room temperature happened to be.

Q. How many times during each day is that room used, Mr. Wacker?

A. What length of time?

Q. Exactly.

A. About two and a half to three hours.

Q. And during the balance of the day is the room closed up?

A. No.

Q. Is there anybody else there besides yourself?

A. The balance of the day the room is not occupied by anybody but myself.

By the Master:

Q. It is not closed up, it is not locked and the windows closed?

A. Yes; it is locked in my absence.

1780 By Mr. Vilas:

Q. You are the only person that goes there habitually?

A. In a general sense I am the only person that uses that place.

Q. When you go there and make your tests you are there perhaps a couple of hours a day?

A. Yes.

Q. And when you go away you lock up the room and leave it to the next day?

A. I lock up the room and leave it until the next day.

By the Master:

Q. Where is the key left?

A. I have it with me.

Q. Suppose there is a substitute man sent; how does he get the key?

A. They have a duplicate at the office.

By Mr. Vilas:

Q. You mentioned having made checks of your readings from time to time. With whom do you make those checks?

A. I mentioned having made checks with other inspectors; is that what you mean?

Q. Yes.

A. Well, I only recall definitely Mr. Birdsley, because he I considered the most important person to bear in mind.

Q. How many times have you done it with him?

A. That I cannot say definitely; I could not give any definite recollection of how many times.

Q. You can give an estimate?

A. I would give a nestimate of about two or three times.

Q. In all the time you have been with the department?

1781 A. In all the time that he has been in charge of the department.

Q. Where did you do that, out in Flushing?

A. Well, the estimate I gave referred to Flushing. I have done it with him in other stations also.

Q. What was the last time that you made a check with Mr. Birdsley at Flushing?

A. I would have to give an estimate.

Q. Give us your best recollection. I do not want anything more.

Mr. Neumann: Why not let the witness answer?

The Master: He is answering; the witness is thinking.

A. I believe about a year ago I guess would be a pretty good estimate.

Q. When you made such a test, what did you do?

The Master: Let him say what he did.

Q. How do you make a check?

Mr. Neumann: I object to that on the ground that it is incompetent, immaterial and irrelevant and all gone over on direct examination.

The Master: Objection overruled.

Mr. Neumann: Exception.

By the Master:

Q. What do you mean by making a check with Mr. Birdsley; how do you go about it; what do you do?

A. Well, I employ different methods, and I think usually we each have our own slips and we each take readings without seeing what the other has taken, alternate readings. In a ten minute test that would involve taking about 20 readings.

1782 By Mr. Vilas:

Q. You each take 10 readings?

A. Yes, and he watches me start the apparatus and shut off the apparatus; he also watches what I do in regard to the other details of the tests.

By the Master:

Q. Then you compare your results, do you?

A. We calculate and compare our results.

Q. Do you recall whether there was any variance the last time that you checked up with Mr. Birdsley?

A. Well, I found every time that there was practically no variation.

By Mr. Vilas:

Q. Some variance?

A. Naturally there would be.

By the Master:

Q. What do you mean by naturally there would be?

A. Scientific matter never comes out to the last dot; scientific problems never check up exactly.

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By Mr. Vilas:

Q. Do you mean to say that if you both observed exactly the same that your calculations would not come out the same?

A. They would come out; in our case they would come within about two-tenths.

Q. Of a candle power?

A. Two-tenths of a candle power.

By the Master:

Q. Is it your recollection that your observations were practically the same?

A. It is my recollection.

Q. The observed candle power?

1783 A. Yes. It is my recollection that our observations were practically the same.

Q. But do you recall any variance at all as to any degree in your observations?

A. No; I do not recall figures if that is what you mean.

Q. I mean, or that there was any variance however slight or large between your observations and Mr. Birdsley's?

Mr. Neumann: He has testified that the variance would be about two-tenths.

A. You asked if there as any variance in the observations; is that right?

Q. As distinguished from the corrected results?

A. There always will be a variance between the observed and corrected.

Q. I mean as between your observed figures and his observed figures?

A. There would be too; the other data is always the same.

Q. In other words, your variance would be because of slight variation in observation?

A. Yes.

By Mr. Vilas:

Q. That is the only point in which there could be a variance it not?

The Master: That is what he said.

Q. After the observations are made, it is all a question of mathematics, is it not?

A. Yes.

Q. And if you used the same factors you are bound to get the same results if your observation is the same?

A. If our observation was identically the same we would get identically the same results.

1784 Q. Your testimony is that there have been occasions when your observe was different?

A. Yes.

Mr. Neumann: To the extent of .2 of a candle power.

Q. Why is this variance; what is it due to?

A. You might call that due to the personal equation and eyesight perhaps, or it may be due to just how the candle happened to read at that time.

Q. When did you first have trouble with your eyes, Mr. Wacker?

A. I never had any trouble with my eyes.

By the Master:

Q. Let me ask Mr. Wacker. Do I understand from the answer that you gave just before the last that candles do not burn uniformly, and that is why you take ten readings, or that the gas does not burn uniformly, and that is why you take ten readings, or both?

A. We take the ten readings to get an average.

Q. Is it because the candle does not burn uniformly, and because the gas does not flow uniformly, or both?

A. Because the candles do not burn uniformly.

Q. You find the gas does——

Mr. Cummings: There may be a variance in that.

The Witness: There might be; that is pretty hard to say.

By the Master:

Q. The point is, that there must be a reason for ten readings; the taking of an average must be due to the fact that there is a variation from minute to minute in either the candle or the gas or both?

155 A. There is a variation mainly of the candle.

Q. So that results depend largely on the condition of the candle-burner?

A. Yes.

Q. As well as on the eyesight and observations?

A. Yes.

By Mr. Vilas:

Q. You have your eyesight tested from time to time, Mr. Wacker?

A. No, I do not.

Mr. Vilas: I think that is important.

The Master: I will not allow that. I think we have got enough about candlepower anyway.

Mr. Vilas: I except to the Master's ruling in preventing me from inquiring into this man's eyesight; I think it is an important element. He testified that he had glasses.

The Master: I know. Next line; I will not allow you to.

Mr. Vilas: Exception.

Q. Were your eyes ever tested for color sight?

A. No.

Q. What do you mean by corrected candlepower as distinguished from observed candlepower?

Mr. Neumann: I object to that on the ground that it is incompetent, immaterial and irrelevant; already gone into on direct examination, fully explained by both witnesses.

The Master: Objection overruled.

Mr. Neumann: Exception.

The Master: Just describe it as simply as you can, Mr. Wacker, just how you get the corrected results from your observe?

1786 A. Well, the corrected result signifies a result that had been corrected due to various factors, the correction of the observed candlepower.

By the Master

Q. That is perfectly meaningless. You have got to explain this so that the judges who read this record, who do not know any more about this practice of reading the candlepower than I did before I got into the Consolidated case, I do know something about it now, but I want you to explain just what you do. Now, in order to get the candlepower of the gas you have in the first place, as I understand it, these two candles burning at one end of this machine; is that right?

A. Yes.

Q. They are supposed to burn at the rate of 120 grains an hour?

A. Yes.

Q. You burn them for 10 minutes, using up 40 grains?

A. Yes.

Q. And while those 40 grains are burning you are observing the candle as compared with the gaslight; is that correct?

A. Yes.

Q. Now, the gas is coming through at a particular temperature, is it not?

A. Temperature and rate of flow.

Q. Likewise pressure has something to do with it?

A. No.

Q. Pressure does not enter into the calculation at all?

A. Pressure does not enter into the calculation at all.

1787 Q. The elements that enter into the calculation then, are

1. the time during which the candles burn up their 40 grains?

A. Yes.

Q. Two, the temperature of the gas?

A. Yes.

Q. Three, the time of the flow of the gas?

A. I do not figure that because I set my gas in the beginning.

Q. Now—

Mr. Neumann: Might I say that when you speak of the 40 for the ten minutes, that is the combined of the two candles?

The Master: Yes.

Q. The amount of grains burned by the two candles is 40 grains in the ten minutes or should be approximately that?

A. Yes.

Q. If the candles burn more or less than 40 grains in the time you use them, you have got to adjust that down to 40 grains?

A. Yes.

Q. You have got to make that calculation?

A. Adjust it to the rate of 120 grains per hour.

Q. If the observation varies in the ten readings, you add them together and divide it by ten; that gives you the average observed candlepower?

A. Yes.

Q. Then you have got to make some calculation based upon the time it took for the 40 grains to burn?

A. Yes.

Q. Also based upon the temperature?

A. The temperature of the gas, the barometric pressure, and then I take my log for the observed candlepower.

1788 Q. In the first place, you have got to recalculate and correct the actual amount of candle burned up in the ten minutes, have you not?

A. Yes; you mentioned that.

Q. And then you have to bring your gas to what temperature?

A. 60 degrees.

Q. And that is figured on one of these tables?

A. Yes.

Q. That you have in evidence?

A. Yes.

Q. And the adjustment or correction of the amount of candle burned is corrected according to these tables?

A. Yes; the barometer pressure at 30 inches.

Q. And all of these factors are applied to the observed candlepower?

A. Yes.

Q. And adjusting that observed candlepower in the light of the adjustments made as to the time during which the candle is burned, the barometric pressure would be more or less than 30 and the temperature of the gas more or less than 60 based upon these tables, you calculate what you say is the corrected candlepower result; is that the idea?

A. Yes.

Q. So that that corrected candlepower depending upon whether the candle burns more or less than 40 grains, and depending upon whether the barometric pressure is more or less than 30 at the time of the test, and depending upon whether the temperature of the gas is more or less than 60, will either increase or decrease the observed candlepower?

A. According to those factors.

1789 Q. Based upon those tables which you have?

A. Yes.

Q. And that result which you just arrived at is what you call the corrected candlepower?

A. Yes.

Q. That is the result that you swear to on all your reports?

A. Yes.

By Mr. Vilas:

Q. On the forms which have been introduced in evidence here you have a column for the recording of the observations at intervals of one minute?

A. Yes.

Q. Those observations range in the neighborhood of $9\frac{1}{2}$ to 10 candles as you record them?

A. No; it is $9\frac{1}{2}$ minutes to $10\frac{1}{2}$ minutes.

Q. That is the observed you put down there?

A. That is what I put on the forms. The consumption of sperm ranges approximately from $9\frac{1}{2}$ to $10\frac{1}{2}$ minutes.

Q. In the column headed "Observation at Interval of One Minute" in which are ten blanks, the figures you record there are the burnings of the candles; am I right?

A. The readings on the photometer.

Q. That is what I am trying to get at; those are readings on the photometer board—

The Master: Wait a minute. Those figures do not represent the observed candlepower of the candles only; it shows the observed candlepower of the gas, does it not?

The Witness: It shows the observed candlepower of the gas.

1790 By Mr. Vilas:

Q. Those figures range, for instance, in the sheet I have before me dated 6/19/18, 9.7, 9.6, producing an average of 9.91?

A. Correct.

Q. Those are the readings on the photometer board, are they not?

A. The 9.91 is the average of the readings on the photometer board.

Q. How do you arrive at what you call your observed candlepower from that figure?

A. I multiply that 9.91 by 2, which is the observed candlepower for the two candles.

Q. And then with the aid of the logarithms which you have described, you reach what you call the corrected candlepower?

A. After considering the other factors.

Q. Considering all the factors and making the corrections, temperature, barometer, and the like?

A. Yes.

Q. You stated you took no account of the pressure of the gas, did you not?

A. I did not, no.

The Master: The barometric pressure.

Q. But you do make a record of the pressure at base of burner pillar in inches?

A. I make a record but it does not enter into the calculation.

Q. What is the purpose of the record?

A. Simply to give me an idea of how the gas is coming. Sometimes if the pressure at the base of the burner pillar varies considerably from what it had been going usually, I investigate to see if there is not something out of the ordinary with the burner. In other words, simply to guide me as to whether the burner is satisfactory.

1791 Q. If the pressure varies considerably at the base of the burner, will that not affect the candle power?

A. Not necessarily.

Q. May it not?

A. No.

Q. How much variation in pressure would you consider material on candle power?

A. Well, there is a question comes up there in regard to the gas. If the gas is considerably higher I find that the burner pressure goes higher too.

Q. But you make no allowance whatever for variation in burner pressure?

A. No; it is not necessary.

Q. I ask you again then what is the purpose of recording that pressure, if no use is made of it?

A. Merely as a guide to the efficiency of that part of the apparatus.

Q. Now, Mr. Wacker, you have testified that on some occasions you make two tests, make second tests?

A. Yes.

Q. Just tell us under what circumstances you make a second test?

A. I have no hard and settled rule about that. I rely upon my judgment. If the gas is close to 22, I will make a second test to be sure that my first test is correct. Sometimes if I find the gas exceptionally high in the afternoon, and I figure that the gas may be poor in the evening, I wait until evening and make an evening test to check up.

Q. If you find the gas in exceptionally high do you ever make a second test immediately.

1792 A. No.

Q. If you find that the gas is a little below the 22 do you make a second test immediately?

A. I make it about an hour later.

Q. Do you ever make a second test immediately following the first one?

A. I would not say definitely; I may have.

By the Master:

Q. Let me ask you this, Mr. Wacker. You said that if you found the gas exceptionally high you might make a second test. Do you ever make a second test if you find it exceptionally low?

A. No.

Q. Why not?

A. Because I have enough confidence in my ability to read the gas to feel that with the difference I would not make so much error.

I know that from past experience in checking up I have never made an error of say two or three candle power.

Q. Why do you then test the second time if you find it exceptionally high?

A. Because I figure that the public is only interested in seeing that they get 22 candle power gas.

Q. What interest is it to you so long as it is over 22?

A. It is my duty to make at least a test a day.

Q. You say you make a second test if you find it exceptionally high.

A. I stated that in a case like that I would wait until evening to see if it was again high.

Q. What difference did it make to you?

A. I want to be sure that I get the average for that day, as near the average as I can.

1793 Q. Why are you not just as sure to try to get the average for that day when it is low?

A. I do; if it is exceptionally low?

Q. Yes.

A. Because I feel that the evidence shows that the law has been violated; and that is all that is necessary.

Q. You look for violations then?

A. No.

Q. Do you find at times when you make a second reading when the gas is exceptionally high that it drops back to 22?

A. I have found that, yes.

Q. Dropped back how much?

A. When you make about a thousand tests in a year you cannot remember those details.

Q. Do you find it varies as much as two candle power?

A. Yes, I have.

A. Did you ever try to see whether it would not go up two candle power within the same time when you find it very low?

A. Well, in a case of that kind, I would simply average my results as the average for the day.

Q. Why is not the gas company entitled to the same average, when you find it low in the morning for some reason, some reason that may have brought it down low, and it would go up higher in the afternoon?

A. If I have the time I would make another test.

Q. You just told me you do not make another test once you catch them below 22.

Mr. Neumann: I think the Master misunderstood.

The Master: I did not. The witness very clearly said that
1794 once he finds them below 22 that that satisfies him, he has caught them in a violation, that is what he goes around looking for.

Mr. Cummings: He did not say that; he is so astounded when the gas is above 22 that he has doubts about his own results.

The Master: Then he should doubt his own result when it is away below 22.

The Witness: You accuse me of discrimination there which is not so.

The Master: I am not accusing you of anything. Apparently it is the practice of your department, if you men find a violation, not to get the average result during the day.

Mr. Neumann: I must respectfully except to that.

The Master: You except to the findings.

The Witness: I might also state, that I have quite often found candlepower below, and where I found it above, it was to their benefit.

By Mr. Vilas:

Q. And when you have done that you averaged the two?

A. I have averaged the two.

Q. You have found cases where the first test showed below 22, the second test above 22, and you then took the average which brought it below; is not that true?

Mr. Neumann: Whatever the figures show.

Mr. Vilas: I have got some cases here.

The Master: Go ahead with them.

The Witness: I think you will find in a majority of the cases I have found in favor of the gas company.

1795 By Mr. Vilas:

Q. Take the test of June 19, 1918, one made at 2:30 p. m. and one made at 3:30 p. m. I show you your original reports which are in evidence.

The Master: The original test sheets?

Mr. Vilas: The original test sheets.

Q. (Continued:) What does your first test show?

A. The first test shows that the corrected candle power was 21.38.

Q. What did the second test an hour later show?

A. The second test an hour later showed 22.31

Q. What did your report show?

The Master: Was it an hour later?

The Witness: It was an hour later.

Q. So that within an hour there was a very substantial difference in the quality of the gas, in the candlepower?

A. Yes.

Q. You took the average of those two figures and reported that as the candlepower for the day, did you not?

A. Yes.

Q. And that average is 21.85?

A. That average is 21.85.

Q. So that you reported a violation where your test had shown at one time a candle power of over 22?

Mr. Neumann: That is objected to on the ground that it is incompetent, immaterial and irrelevant.

The Master: Objection overruled.
Mr. Neumann: Exception.

By the Master:

Q. Why did you not go back an hour after that again to see what it was?

1796 Mr. Neumann: That is objected to on the ground that it is incompetent, immaterial and irrelevant. He is only required by statute to take one test a day.

The Master: I know that.

Q. At 2:30 p. m. you found the gas to be 21.38?

A. Yes.

Q. At 3:30 you found it to be 22.31?

A. Yes.

Q. Why did you not go back then at 4:30 and make sure?

Mr. Cummings: Then you want him to go back at 5:30 and 6:30.

The Master: Why, when he found so substantial a variance between 2:30 and 3:30 he did not make one more try at 4:30 and get the average of the three tests?

Mr. Neumann: I object to that. He is only required to make one test.

The Witness: Why should I make a third test?

By the Master:

Q. I do not know; you saw no reason for it?

A. There may have been a very good reason; I may have had to be in another station.

Q. Why did you not report the second test that you made rather than the first one?

Mr. Neumann: He took the average of the two.

A. I thought the average for the day was fair.

Q. How many days throughout the year do you take the average of the day?

A. Whenever the time allowed me.

Q. How many times do you think you did it in any of the four or five years?

A. That is a rather difficult question to answer.

1797 Q. Would you say fifty?

A. In the four or five years?

Q. Yes.

A. I would say more than that.

Q. More than that?

A. Well, if you want to guess at it I would say 100.

Q. It would not exceed 100?

A. I would not say that; I am simply giving you a guess.

Q. Then it is the fact that it makes a great deal of difference as

to what particular time you happen to heat the gas as to what it shows?

Mr. Neumann: If the Court please, I think that that presupposes a state of facts that have not been proven, and I object to it.

The Master: Objection overruled; is that so?

Mr. Neumann: Exception.

A. It can make a difference, yes.

Q. In other words, as it appears from these two sheets, you might test the gas at 11 o'clock and find it way high and an hour later find it considerably lower, and an hour later find it varied again?

A. You are presupposing that fact.

Q. Is there not a constant fluctuation in the quality of the gas?

Mr. Neumann: May I put this objection on the record here, that the statute requires this company to furnish 22-candlepower gas; that means very part of the day.

The Master: I think it is a perfectly stupid, silly statute.

Mr. Neumann: Whatever your Honor's preconceived notions of the statute may be, the fact is that the statute is there and 1798 compliance is required from this company.

The Master: It is quite apparent to me that no gas company, whatever its wicked make-up may be, could so operate its plant as to deliberately have a gas that runs .62 of a candlepower below standard at 2.30 and .31 of a candlepower over standard at 3.30.

Mr. Neumann: What about those tests when the variation runs down to 17?

The Master: In the variation of temperature and in the pressure and in the other things, that naturally and necessarily enter into it, that causes constant variation, I say that a test made at some particular hour in the day indicates nothing.

Mr. Cummings: They only have to make one test. We say that picking out one sheet of a mass of four or five years is not a fair way of testing the accuracy of the witness' testimony.

The Master: What has just been developed confirms the impression that I have had, that the only fair way to find out whether a gas company has attempted to comply with the law, or has complied with it, is to take the readings for a month; take the average over a month.

Q. Now, Mr. Wacker, I call your attention to your work sheet report for October 29, 1918, indicating that at 4:35 p. m. you made a test resulting in a corrected illuminating power of 22.92; at 5.30 p. m. of the same day you made a second test resulting in a corrected illuminating power of 23.10; and at 8.45 p. m. of the same day you made a third test showing a corrected illuminating power of 17.99-23.40. Have I correctly stated the fact?

A. Yes.

Q. Why did you make three tests on that day?

The Master: Your gas was too good. That is perfectly apparent from what the witness has already said.

A. You must bear in mind that I had other work besides testing for candle power; I have two stations to cover, and it is pretty hard for me to remember why I did certain things in a remote year.

Q. It is quite obvious to you isn't it, that you were chasing a high candle power there in the hope that it might be found to be too high?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial, and it is a very ungentlemanly characterization.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. No, it is not obvious.

The Master: Isn't this obvious, that you were surprised to find the gas going up on the second test?

The Witness: No, it is not obvious. I may have had nothing else to do, and I may have taken it in order to get a fair average for the day.

Q. Do you work evenings; do you frequently take tests at night?

Mr. Neumann: Now, your Honor is taking exception to his taking three tests, while if he did not, you might be complaining that he did not take enough.

The Master: I am not taking exception. I am interested in the fact that he does take three tests.

1800 Q. How often do you take tests as late as 8:45 at night,

Mr. Wacker?

A. Why, I take night tests usually about twice a week.

Q. Did you ever take three tests of the New York & Queens Gas Company's gas because you found it was below 22?

A. No, I don't recall.

Mr. Vilas: Now, if the Court please, I do not want to take up time here with a whole lot more of these cases. I am prepared with these work sheets here. For instance, there is February 7, 1919—

The Master: The papers are in evidence.

Mr. Neumann: I think that is manifestly unfair. Either counsel ought to go forward without characterizing anything on the record, or he ought to quit; but to leave the record in that uncertain state, that he may be able to show these things, is not the proper way. Let him go ahead and show it.

The Master: Mr. Vilas can spread on the record the particular days that he wants to call my attention to, to look at these sheets and likewise spread on the record what the sheets show.

Mr. Neumann: That is over the objection of all the defendants?

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Vilas: I call the Master's attention to the fact that the record now shows that on February 7, 1919, the witness Wacker made two tests of the New York & Queens Gas Company's gas, one

of them showing 21.77, and the other 22.41, an average of 22.09.

1801 The Witness: That is where I helped the company out.

Mr. Vilas: I call your attention to the fact that on April 10, 1919, the witness Wacker made a test of the New York & Queens Gas Company's gas which showed 21.48. He made a second test which showed 22.40, and reported the average of those two as the candle power for that day, to wit, 21.94.

Mr. Neumann: Go ahead, and you will find that what the Master thinks is not correct.

Mr. Vilas: I call attention to a test made by the witness Wacker on October 30, 1919, in which one test showed 20.59, and the second test 22.11, and that the witness reported as the candle power for that day 21.35.

The Master: Is there anything else?

By Mr. Vilas:

Q. I notice from the tabulations placed in evidence that no tests were made by you on the days from January 7th to January 13th, 1919, inclusive. Do you know why that was?

The Master: You mean no tests were made by anybody?

Mr. Vilas: No tests recorded.

A. It may have been due to some part of the apparatus being under repair, in which case we took no tests.

Q. May it not have been due to the fact that there was a blizzard on and you couldn't get there?

A. That is not likely. I usually get there. It has to be a pretty hard blizzard for me not to get there.

1802 Redirect examination.

By Mr. Cummings:

Q. If the gas is subjected to a temperature of forty degrees in the main, and a temperature of 50 degrees in the hall, would the quality of the gas be lowered by the hall temperature?

Mr. Vilas: I object to that as not within the province of this witness.

The Master: Objection overruled.

Mr. Vilas: Exception.

A. The quality of the gas—the candle power would be raised.

Q. I think Mr. Vilas brought out on cross that there was a slight variation when you compared your tests with some other observer. When two observers are taking readings considerable movement results which causes drafts and affects the candle flame, and is apt to cause a slight difference in the reading by the two observers. Is that right?

Mr. Vilas: I object to that as not proper redirect examination, and grossly leading.

The Master: Objection overruled.

Mr. Vilas: Exception.

A. Any considerable movement will cause a fluctuation of either flame.

Q. That would be apt to occur where two observers are in the room acting together, you might get a slight variation between the observations of the two?

A. Yes, the observations would not be reliable under those circumstances.

Q. And that fact would account for a difference of .2 candle power, would it?

A. Oh, easily.

1803 Recross-examination.

By Mr. Vilas.

Q. Do you mean to say that you would take a reading or make a test when the conditions were such as to cause fluttering of the flame, or other conditions?

A. Well, it is possible we might move to that extent. We have to make a move in order for the next observer to look at the candle.

Q. You don't make allowance for that, you don't wait until the atmosphere has quieted down?

A. We avoid those disturbances to the best of our ability.

Q. You avoid it when you are making a comparative test?

A. To the best of our ability.

Q. Gas which has been exposed to a low temperature has a tendency to lose its candle power, hasn't it?

A. If the gas is properly fixed, it ought not to.

Q. Is it not a fact that gas exposed to a low temperature loses candle power?

Mr. Neumann: The witness has already testified to the contrary. That may not be the answer you want.

The Master: Let him answer it again.

A. If the gas is exposed to a low temperature, I say if it is properly fixed, and it is assumed that the Gas Company knows how to do its business, how to attend to its work, that would have no effect.

Q. Do you mean to say that a gas containing illuminants sufficient to produce 22 candle power will not lose any of its illuminant to condensation in a cold main?

1804 Mr. Cummings: If it is too cold it will, certainly.

A. In extremely cold weather it would lose by condensation.

Q. And it would lose in candle power, wouldn't it?

A. In candle power.

Q. Do you want the Master to understand that if that same gas goes through a warm pipe into a house it would recover that candle power?

Mr. Cummings: No, he said just the opposite.

Mr. Vilas: No, he didn't say that.

The Master: Let the witness say.

A. It would not recover that, no.

Q. Then you did not mean to be understood as saying that gas which had been exposed in the main to a certain temperature, and in the house to a higher temperature, would recover its candle power?

Mr. Cummings: I did not ask him that.

The Master: The inference you left was that that would be the result. Do you get the question, Mr. Wacker?

A. Yes, I understand the question. If I left that inference I did not mean to.

The Master: Once the gas has been subjected to such a temperature as to take out illuminants, the fact that it goes into a warmer temperature will not restore the illuminants—is that correct?

The Witness: It will not.

Mr. Cummings: So my point is right.

By Mr. Cummings:

Q. If the gas is 40 degrees in the main, and 50 degrees in the room, it would not matter, because it has already lost its illuminants?

1805 A. If the illuminants are condensed they cannot be still there; they are in the mains.

The Master: If the illuminants are gone, the mere fact that the temperature in the hall is higher does not make any difference.

The Witness: It would not make any difference in the candle power.

Mr. Neumann: Just one more question; I don't know whether it is covered.

The Master: Sure it is covered.

By Mr. Neumann:

Q. Do you know where the testing station of the New York station of the New York & Queens Gas Company is?

The Master: Yes, that is covered. It is in the same building, on the same riser, the same gas.

All right, Mr. Wacker; step down.

BENJAMIN COHEN recalled.

Cross-examination.

By Mr. Goetz:

Q. Mr. Cohen, will you please refer to Defendants' Exhibit A-13, your schedule No. 5. Is it a fact that that statement showing operat-

ing revenue per thousand cubic feet, and operating expenses per thousand cubic feet, is based upon Defendants' Exhibit A-12, your Schedule 4-B entitled, "Gas Operating Revenue and Revenue Deductions"?

A. Partly on that.

Q. In part upon what else is it based?

1806 A. Based upon the annual report. The part covering production are based on the annual report.

Q. In showing on Defendants' Exhibit A-12 the operating revenues, have you not included as a part of the revenues the item of residuals and by-products?

A. I have.

Q. And in the same Exhibit A-12 you have not made any allowance in operating expenses, or what you call operating revenue deductions for the revenue derived from residuals and by-products, is that correct?

A. That is correct.

Mr. Neumann: That was about \$13, wasn't it, Mr. Goetz?

Q. In calculating your figures on Defendants' Exhibit A-13, Schedule 5, how did you treat residuals and by-products in the operating expenses?

A. They are taken off the boiler fuel right along there.

The Master: What do you mean taken off, excluded from boiler fuel?

The Witness: Deducted from boiler fuel.

Q. In other words, Exhibit A-13—

Mr. Neumann: May I call the Court's attention to the fact that Note A on the Exhibit explains that?

Mr. Goetz: It does not explain it at all.

Q. In other words, on Exhibit A-13 you treated the income from residuals and by-products as an abatement of the operating expense, is that correct?

A. That is correct.

Q. In Exhibit A-12, the income from residuals and by-products is now shown as an abatement of operating expenses?

1807 A. That is correct.

Q. In Exhibit A-13 have you not included in the operating revenue the income derived from residuals and by-products?

A. I have.

The Master: What has Mr. Cohen done, put them up on one side and not on the other?

Mr. Goetz: In Exhibit A-12 they appear only on the income side, that is, the income from residuals. In calculating the figures on A-13 he has reduced the operating expenses by the income from residuals, but has failed to take from the operating revenue the income from residuals.

The Master: That is what I say.

Mr. Goetz: He has got it in on both sides.

The Master: That is what I say.

Q. If the income from residuals were deducted from your operating revenue calculations on Exhibit A-13, it would slightly modify those figures?

A. Well, it would not modify the result any, because the figures below the production are based on entirely different calculations. It would not affect the figures up to cost of gas in holder—that is, up to total production expense, rather.

Q. Your excess of revenue over expenditures is the difference between the operating revenue and the revenue deductions?

A. No, that is not correct. That is based entirely on the statement on Exhibit A-12, and the condition referred to, but does not affect the net operating income.

Q. You say that the figures on Exhibit A-13, the excess of revenue over foregoing deductions, is not the difference between the 1808 operating revenue and the operating income as shown on Exhibit A-13?

A. No.

Q. Take the items for 1909 on Exhibit A-13, the total operating revenue is there stated as 1.1234—is that correct?

A. Yes, sir.

Q. Now, the total revenue deductions, or total operating expenses, are shown as 71.81 cents?

A. That is correct.

Q. What is the difference between the two amounts I have just read?

A. The difference is 40.53, but the 40.53 is not affected by the two cents difference referred to, because the 71.81—in this 71.81 the two cents has been cleared out in the gas unaccounted for.

The Master: How do you clear it out of the gas unaccounted for?

The Witness: In this way: The total production cost as taken on Exhibit 13 comes from Exhibit 12, on which there is no question. The divisor remains the same. Therefore the net of 71.81 is not affected by anything which appears under production, because those figures are taken from a different source entirely.

Q. On Exhibit A-13 you have an item under the title "Gas unaccounted for", and you say under that item you have cleared this difference on account of the residual income?

A. It is cleared out in that item, because that item is a subtraction of 29.36 and the 35.03.

Q. Will you tell me where in the calculation on Exhibit A-13 you have taken into account the gas consumed by the company itself?

1809 A. I have not taken that into account, and have not done so for the reason that the 29.36 is the figure I derive by dividing the gas made into the cost. The 35.03 is derived by dividing the gas sold into the cost. Therefore all those items such as gas used by the company are washed out—

The Master: No, but we are talking about residuals used for fuel.

Mr. Goetz: I just pass on. The witness said he took care of that item in gas unaccounted for. Now, to show what is included in this gas unaccounted for I have asked the witness where he took into account the gas consumed by the company itself, and he said he took care of that in gas unaccounted for.

Mr. Neumann: In one case he took the production, and in the other case the gas sold.

Q. By the item "Gas unaccounted for", you do not mean to imply that that is the gas unaccounted for in the company's send-out, do you?

A. I don't know just what the practice of the company is in regard to unaccounted for gas. If they charge themselves, and credit an account which the Commission described as duplicate gas charges, in that case it is taken care of in the general expense. If they do not do that, it is washed out, as I said before, in the gas unaccounted for.

Q. Is not gas unaccounted for the difference between the gas manufactured and the gas sold, plus the gas used by the company itself, isn't that the unaccounted for?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial, and it is counsel's own interpretation of what that phrase means.

1810 Mr. Cummings: And he is wrong about it at that.

The Master: Objection overruled. I will take the witness' answer.

Mr. Neumann: Exception.

A. When you take the gas unaccounted for here——

Q. I am not asking you that, I am asking you what ordinarily is gas unaccounted for.

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial, being the uniform system of accounts if properly followed indicates and shows what that is, *now* what this witness says.

Mr. Goetz: The Witness has already testified that he has included in gas unaccounted for, diverging from the uniform system of accounts, this item of residual expense, this item of gas used by the company. I do not want to leave on this record a caption "Gas unaccounted for" with certain amounts stated opposite, and leave that as a basis for other experts to calculate gas unaccounted for. This "Gas unaccounted for" referred to by the witness is not "Gas unaccounted for" that everybody else refers to.

The Master: I think you have already got it on the record by his statement that he has included in gas unaccounted for gas used by the company.

Mr. Goetz: And also the residual income.

Mr. Neumann: He says it was washed out by that item, that that is how it was taken care of.

1811 By the Master:

Q. Is it your testimony that the true operating results of this company's business as you gather it from their books is as shown on this Exhibit A-13?

A. It is my testimony that the result their books show is as shown on this Exhibit A-13, especially the net result down below.

Q. In other words, it is your statement that in 1909, according to their books, you found that they sold their gas at a profit of 40.53 cents per 1,000 cubic feet?

A. That is correct.

Q. And that it dropped to 39.45 in 1910?

A. That is right.

Q. And to 32.57 in 1911?

A. That is right.

Q. It went up a little in 1912, dropped again in 1913, dropped some more in 1914, went up a little bit in 1915, a little more in 1916, dropped very substantially in 1917 down to 19.83 cents?

A. That is correct.

Q. And your testimony is that in 1918, according to their books, they only made 10.18 cents per 1,000 cubic feet?

A. That is right.

Q. And in 1919 they lost 7.33 cents on every thousand cubic feet of gas sold?

Mr. Neumann: According to their books.

Q. According to their books?

A. That is right.

Q. That is your analysis of their books?

A. That is right.

Q. And your statement as to their operating results as reflected in their books?

A. That is correct.

1812 By Mr. Goetz:

Q. Exhibit A-13 is based upon the figures in Exhibit A-12?

A. I have stated that it is based on Exhibit A-12 as far as the items below "Gas unaccounted for" are concerned, and as you see on the exhibit it is in the note, if you will read it. The balance is based on the Public Service Commission's annual report.

Q. Then when you stated to the Master that according to the books of the company the figures shown on Exhibit A-13 show the operating results indicated upon this Exhibit, you mean that that was shown by the books and by the annual reports?

A. I did not.

Mr. Neumann: Are the annual reports extracted from your books, Mr. Goetz? Why confuse the issue?

The Master: Don't get into that.

A. I didn't do any such thing. The figures shown here, the net figures as I explained are taken from the books. As a matter of

fact the production expenses which I have agreed exactly with the annual reports.

Q. On Exhibit A-13?

A. Exhibit A-13.

Q. For all of the years?

A. For all of the years, except in one case where the company I believe made an error in its annual report, and instead of following the annual report—in other words, we followed their books all the way through for that line there.

The Master: Just one other question, so I will get this clear. In your table 4-B, you show year ending December 31, 1919, 1814 a total sale of various classes, municipal, street lighting, buildings, prepayments, commercial meters of \$336,241.4 thousand cubic feet, is that right?

The Witness: That is correct.

Q. So that your testimony is in substance that for the year 1918 their net profit was \$33,600 at about 10 cents per cubic foot?

A. The net profits for 1918 were \$33,350.56.

The Master: Where is that figure, where did you read that figure from?

The Witness: On Schedule 4-B.

Mr. Neumann: In that connection I would like to call the Court's attention to the fact that we contend that the item underneath that column totalling approximately \$2,300, should be added to that amount, so that the total operating income of that year would be \$35,000 odd.

Q. Taking for the year 1918, Exhibit A-13, the excess of revenues over deductions, the 10.18 is arrived at by dividing the amount shown on Exhibit A-12, \$33,350.56, by the total quantity of gas sold. Is that correct?

A. That is correct.

Q. And the same for 1919?

A. The same for 1919.

Q. And the other years as well?

A. That is correct.

Mr. Neumann: In connection with 1919 I would like to call the Court's attention to—

Mr. Goetz: I do not like to be interrupted in this way, it is hard to follow these figures.

Mr. Neumann: In the year 1919, among the items that we claim should be included in the year 1919, but which have not been included in the computation is this amount of \$15,518.73 for the rate case.

The Master: I understand those things, Mr. Neumann. Let Mr. Goetz make his record. I have this thing pretty clearly in my mind.

Q. Have you examined Complainant's Exhibits 64 and 65 which were put in evidence by Mr. Teele?

A. I have looked them over, yes.

Q. Showing the revenue and expenses for 1919 and the cost of production?

A. Yes.

Q. Now, in your revenues on Exhibit A-12 have you included the item shown in Mr. Teele's exhibit for interest on bank balances, \$308.60, as a part of the revenue?

A. I have not.

Q. Have you included, as Mr. Teele has in his revenues, the item of \$5.44 for interest on consumers' final bills?

A. I don't believe I have.

Q. Have you included in your revenues, as did Mr. Teele, the item of \$81.10 for interest on main contract deposits?

A. I don't believe I have.

Q. Have you included in your revenues, as did Mr. Teele, an item of \$257.91 for bad debts collected?

A. I have not.

Q. Have you included as a part of the operating expenses the item which Mr. Teele included in his operating expenses of \$1,621.10, interest on consumers' deposits?

A. I have not.

1815 Q. Have you included in your operating expenses, as Mr. Teele did in his, an item of \$156.25 for bad debts written off?

A. I have not.

Q. And in your Exhibit A-12 have you included the total taxes charged upon the books of the company, or have you, as Mr. Teele has testified and shown upon his exhibit, deducted from taxes as not applicable to the gas business an item of \$443.25?

Mr. Neumann: Which item is that, Mr. Goetz?

A. I would like to see the exhibit; I don't remember it.

Mr. Goetz: I am bringing this out so that your Honor may see the differences between those two statements. I think that is what your Honor would like to know.

The Master: Yes, that is what I do want to know.

Q. Here are the taxes.

A. How much is that?

Q. \$443.25.

A. I don't see it here.

Mr. Neumann: What item were you speaking of? Where is it on this exhibit that you are talking about, Exhibit 65?

Mr. Goetz: That is the difference between what Mr. Cohen included in his taxes and—

The Witness: That is included in the statement of taxes.

Mr. Neumann: It is down underneath there, in that explanatory note, that amount of \$443.25.

The Master: Tax on bondholders' income, is that it?

1816 Mr. Neumann: Yes.

The Master: Taxes on bondholders' income, is that a federal deduction at the source?

Mr. Goetz: Yes. Mr. Teele did not include in his statements of revenues and expenses and cost of production the item of taxes on bondholders' income.

The Master: He did not include it?

Mr. Goetz: He did not include it.

The Master: I understand in this \$24,000 figure it is not included there.

Mr. Neumann: Certainly not.

Mr. Goetz: In the \$24,660 it certainly is.

The Master: Yes, it is included.

Mr. Goetz: They agree with us that it ought to be taken out.

The Master: All right, what is the use?

Mr. Goetz: All I want to do is to point out the difference between the two statements so you will have it.

Mr. Cummings: Get to something where we disagree.

Mr. Goetz: I will give you a couple of places where we disagree.

Q. Now, referring to Defendants' Exhibit A-8, Schedule 2-A, you don't understand that the item of profit and loss or corporate surplus or deficits shown upon that exhibit, and also upon Exhibit A-9, Schedule 2-B, represent profits in the particular years as of which the amounts are stated?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial. That is something for the complainant to explain and not this witness. This is a tabulation from their books.

1817 The Master: Objection overruled.

Mr. Neumann: Exception.

A. The fact that it appears on the balance sheet is proof of the fact that the profit was not made in that year. The profit and loss account on the balance sheet shows the accumulation.

Q. In the preparation of your exhibits A-11 and A-12, Schedule 4-A and 4-B, purporting to set forth the revenues and expenses from 1904 to 1919, you did not attempt to allocate to the particular year revenues or expenses shown in the profit and loss statements, Defendants' Exhibit A-19, so as to show all the entries pertaining to the particular year under revenues or expenses?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial. The witness has stated that he made no apportionment or deductions, that he simply took the books as he found them.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. I made no attempt to do that, for the reason that the books themselves do not show enough information to enable that being done.

Q. How far did you check up the items shown on Defendant's Exhibit A-19, Schedule 9, profit and loss, appearing under "Adjustments"?

A. I do not get the question.

Q. Did you make any attempt to analyse the adjustment debits and credits appearing on the profit and loss statement which you prepared?

A. I have a list of the items which compose those adjustments.

Q. Have you simply the amounts, or the details showing the purposes for which they were made?

1818 A. I have the amounts, and the accounts, that is, the debits and credits as the case may be.

Q. Do you say that you did not feel yourself able to pick those out sufficiently so as to allocate the debits or credits to the particular years to which they pertain?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial, and it presupposes a state of facts that this witness has not testified to at all.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. I will answer that in the negative.

Q. Well, now, referring to Defendants' Exhibit A-19 showing the profit and loss account from 1904 to 1919, do you find in the debits and credits an item of bad debts collected and bad debts written off?

Mr. Neumann: The exhibit speaks for itself. I object to that as incompetent, irrelevant and immaterial.

A. You will find those items between the years 1909 and 1919, as you will see on the exhibit itself.

Q. In preparing Defendants' Exhibit A-21, Gas operating revenues and expenses 1909 to 1919, did you show the items of debits and credits for bad debts collected and bad debts written off which appears upon your profit and loss statements?

A. I did not.

Mr. Neumann: May I ask the Master this: Does counsel for complainant contend that debts are a part of operating expense and revenue of the gas-making business?

The Master: I don't know and I don't care at this time. Go on, let us get through with this case.

1819 Q. Is there any line in the books of account of the complainant upon which is stated any figure precisely as you have given for the operating income for each of the years on Exhibit A-12?

A. I do not get the question.

The Master: Will I find those identical figures at any particular place in the books—operating income?

The Witness: The operating income is a derivative figure, from the revenues.

Mr. Neumann: It is quite evident that those figures will be found on the books, if those accounts which the witness has set forth in Exhibit A-12 will be looked into.

The Master: I wish you would not interrupt, but let us get through with this cross-examination.

Q. In view of the statement of counsel, I ask the witness again, do these figures appear precisely in the books of account of the company, the operating income account?

Mr. Neumann: Do you mean each identical figure, or the totals? That is where your question is not clear.

Mr. Goetz: Each amount for operating income.

A. Do you refer to the end of the year, the excess of revenue over expenses?

Q. It says operating income, excess of revenue over expenses above; then there are figures given for each year.

A. Yes.

Q. Do these figures appear precisely in the books of the company?

A. No, they do not appear in one amount on the books of the company, but there is the result of taking the revenues which
1820 appear on the company's books and deducting the expenses which appear on the company's books.

Q. As you have grouped them?

A. As we have grouped them and as the company groups them in their annual reports to the Commission in some cases.

Q. Are the forms of annual reports prescribed by the Commission?

Mr. Neumann: That is objected to on the ground it is incompetent, irrelevant and immaterial, no foundation laid for it, and not proper way of proving it.

The Master: Overruled.

Mr. Neumann: Exception.

A. I presume they are.

Q. So that the company making its report follows the form prescribed by the Commission?

Mr. Neumann: That is objected to on the ground it is immaterial

A. They do not.

Q. In what respect do they not?

Mr. Cummings: Now tell him once for all

Mr. Goetz: Yes, I want to know.

A. They include them just on bank balances in their revenues which the Commission claims are not to be included, and there are several other respects in which the Commission claims year after year the company does not follow its rules, like accrued amortization and contingency account procedure.

Q. What other items are there?

A. I do not remember all the details, but I do know that there are several letters that go out each year calling upon the company
to follow the rulings of the Commission, or to follow the
1821 accounts as they are prescribed, and so on.

Q. Is it not a fact that all the correspondence that has been exchanged between this company and the Public Service Commission relates simply to the item interest on bank balances and to the item accrued amortization of capital?

Mr. Neumann: That is objected to as incompetent, irrelevant and immaterial; the correspondence is the best proof of that.

Mr. Cummings: This is not the way to prove it.

The Master: Overruled.

Mr. Neumann: Exception.

A. I could not answer that question without having the correspondence in front of me.

Q. You do not recall any other instances, do you?

Mr. Neumann: He has already stated so.

A. I am not familiar with the correspondence, sufficient to enable me to answer that question.

Mr. Cummings: Mr. Cohen has not anything to do with that.

Q. You volunteer the information without being familiar with the correspondence, then?

Mr. Neumann: You asked the question, Mr. Goetz, and he answered you.

Mr. Goetz: But I did not volunteer anything at all.

Mr. Neumann: It was a direct answer to your question.

The Master: Mr. Cummings, I do not know whether I will have to appoint Mr. Neumann sergeant-at-arms to keep you quiet, or whether I should appoint you to keep him quiet.

Q. Referring to your Defendants' Exhibit A-15, Schedule 6-B, where in the Uniform System of Accounts do you find an 1822 account Gas Meter and Distribution?

The Master: What is that item?

Mr. Goetz: Gas Meter and Distribution.

Mr. Neumann: That is objected to on the ground that it is incompetent, irrelevant and immaterial.

The Master: Does it make any difference in his results here?

Mr. Neumann: No.

The Master: Or is this a purely academic discussion you would like to have?

Mr. Goetz: It is not an academic discussion, but these are going to be used by their experts as the basis for making certain calculations of costs to this company. If there is something like Gas Meter and Distribution, it is something very new, and I want to find out where it is going to have a place in the testimony of the expert who will testify.

Mr. Neumann: Objected to as incompetent, irrelevant and immaterial.

A. It is apparently an error of the typist in mistaking the word "installation" for "distribution."

The Master: Gas Meter Installation, that ought to be?

The Witness: Gas Meter Installation.

Q. Mr. Cohen, did you receive any instructions from Dr. Weber in connection with the preparation of these papers?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial.

The Master: I will allow it.

Mr. Neumann: It has no bearing on this case at all.

1823 The Master: I will allow it.

Mr. Neumann: Exception.

A. I do not recall any specific instructions that I received from Dr. Weber in regard to any particular schedule, but, as you know, I am under his supervision.

Q. Did you talk at all to Dr. Weber about preparing the three months' statement, comparing the revenues and expenses of the first three months of 1919 with those of 1920?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial. If the complainant's counsel wants to know, I will tell him that I had him do that to meet Mr. Spear's exhibit that he put in.

The Master: The objection is overruled, then.

By the Master

Q. Did Dr. Weber tell you to get up that three months' statement.

A. No, he did not.

Q. Who did?

A. When I got up to Fifteenth Street I found a statement for a few months, compared—a few months incomplete statement that Mr. Frank had made, and I remade that in a different form as shown here, and brought it down to Dr. Weber. He approved it and that is how it is here.

Mr. Cummings: It does not matter who directed him to do it anyway, does it, your Honor?

The Master: No.

Mr. Goetz: It might.

Mr. Neumann: How would it?

Q. Will you please give me the precise figures as you calculate the revenues per thousand sold for 1919 and 1920?

1824 Mr. Neumann: That is objected to on the ground it is incompetent, irrelevant and immaterial and fully covered by the exhibit.

The Master: I do not quite understand your question, Mr. Goetz.

Mr. Goetz: It does not speak for itself. I would like to know how he arrives at 1.03 for 1919 and 1.06, the figure for 1920?

Mr. Neumann: It is all stated in there.

Mr. Goetz: There is not a thing stated in there.

The Master: What schedule is that?

Mr. Goetz: Exhibit A-20, Schedule No. 10.

A. I can say that that is done by dividing the 83041.2 M cubic feet into the 85851.68 of revenues.

Q. Will you please do that, and also the other item of 1.06?

Mr. Neumann: Give him one at a time.

A. Apparently the clerk who figured that particular ratio—I did not go over the ratio myself, naturally—should have omitted the nought, and it should be 1003.

The Master: For 1919?

Mr. Neumann: 1919.

The Master: Now, figure 1920.

The Witness: I make it 1.06, the same as it is on there.

Q. In other words, you would now correct these figures so as to show an improvement in the revenues of 6 cents instead of 3 cents?

A. Just a moment, please. (Witness makes computation.) I want to correct my former statement, the figures as they are shown here are both correct.

Q. Will you please give me the fractions for those figures?

1825 Mr. Neumann: Do you mean beyond the two figures following the decimal point?

Mr. Goetz: Yes.

A. The fraction on the 1.03 is 319244, which is less than half, therefore it is dropped.

Q. What is the fraction on the 1.06; isn't it less than 1.06?

A. I can give you that. On the 1.06 the remainder after multiplying by one is 624625. The multiplication of 6 by the 108997 gives 653982. Under the same rule you drop less than half a cent. I took less than a quarter of a cent of the next one.

The Master: Yes, but the company gets it coming and going, both ways, then. You are dropping it against them in one place and you are adding it on them in another place.

Mr. Goetz: This difference of three cents according to my computation is reduced to 2½ cents.

The Master: Yes, I can see that.

The Witness: If we went out far enough we would get—

The Master: You see, what you do there is drop a fraction and add a fraction, both being against this company.

The Witness: Well, if they were in favor of the company it would be the same thing.

The Master: That may be, but just now it is against them.

Q. With regard to that same sheet, Exhibit A-20, you have there calculated, the operating expenses per thousand cubic feet of gas sold in those three months, have you not?

A. Yes, per thousand cubic feet sold.

Q. That is arrived at by taking the total quantity sold and dividing it into the total amount of money paid for operating expenses; is that correct?

A. The figure for operating revenue deductions is based on the quantity sold divided into the operating revenue deductions.

Q. If the quantity of sales for three months was lower, then the cost per thousand would be higher; is that correct?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial.

The Master: Overruled.

Mr. Neumann: Exception.

A. That is evident.

Q. From your examination of the accounts of this company and your calculations per thousand of sales for the various periods shown upon your exhibits, have you not found that the commercial administration expenses, the transmission and distribution expenses, the promotion of business expenses, the general miscellaneous expenses and tax accruals do not vary substantially by reason of the quantity of gas sold?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial. If the Master will recall, when Mr. Spear put in an exhibit for only a part of a year, I raised those very objections, and yet over them that exhibit went in, and here is one to match it.

The Master: Overruled.

Mr. Neumann: Exception.

A. I have not made any analysis of the exhibits in that way, in order to be able to give an opinion.

Q. I am not asking for an opinion, I am asking if that is not exactly what you observed?

A. All I can do is repeat my answer.

1827 The Master: You have not observed it?

The Witness: I have not observed it.

Q. Take your Exhibit A-12 and the Schedule 4-B, for transmission and distribution expenses of 1917 and 1918 is it not a fact that while the sales increased 41,000,000 cubic feet, the transmission and distribution expenses decreased?

Mr. Neumann: What are you trying to prove now, that the prices are going down? Objected to on the ground it is incompetent, irrelevant and immaterial, that the exhibit speaks for itself.

The Master: Overruled.

Mr. Neumann: Exception.

Mr. Goetz: I want to answer the question of counsel. I am trying to prove that certain expenses do not vary proportionately with the output, that the taxes will be constant with the company, whether the company manufactures one foot or a million cubic feet. And yet the cost per thousand will vary accordingly.

Mr. Neumann: And that is the distribution expense, is it not, that does not vary?

A. Will you please repeat your question? I do not follow you.

Q. Taking your Exhibit A-12 and the Schedule 4-B, for transmission and distribution expenses of 1917 and 1918, is it not a fact that while the sales increased 41,000,000 cubic feet, the transmission and distribution expenses decreased?

A. While it is a fact that the sales increased by 41,000,000, the transmission and distribution expenses charged upon their books decreased by a little less than 2,000, but I do not know what 1828 was included in the particular items of those particular years; I would have to know more about the details of what is in there.

The Master: It is argument.

Q. Going back to Exhibit A-13, your Schedule No. 5 showing the gas operating revenues and revenue deductions per thousand cubic feet of sales, did Mr. Moeran go over some of these figures with you?

A. We went over them together, yes.

Q. Did you find any arithmetical errors in some of them?

A. The ones you referred to and brought out on cross examination, and there were differences in a few others.

Q. Take it for 1915, the cost of water gas oil per thousand cubic feet of gas made is shown upon your statement as 13.09 cents. Did you not find on going over the figures with Mr. Moeran that there should have been 13.13?

A. He has 13.13, but I did not have the 1915 annual report to see where the difference came in.

Q. Taking 1918 for the same item, your figures are 28.89, and did he not show you his figures of arithmetic to result in an amount of 28.93?

A. I do not remember, but probably that is the case.

Q. But, were there not several other items of that kind?

A. There were several small items, due I believe to dropping a half cent in some cases. We may have dropped it and Mr. Moeran may not have dropped it.

Q. If you make the correction on that exhibit for the income from residuals which is included in your item miscellaneous, should there not be a corresponding correction in all the figures on 1829 the line marked total operating revenue deductions?

Mr. Cummings: I object to this, your Honor. Of course they make some corrections, and they may make more.

The Master: Overruled.

A. No, they should not. I told you that very thing in the very first part of my cross examination.

Q. You said that the two cents or the differences were washed out in gas unaccounted for; is that what you said?

A. The difference disappeared, for this reason——

Q. Well, is that what you said?

Mr. Neumann: One moment, let him answer, please.

The Master: Let him answer it.

The Witness: The difference appears for this reason: The figures on the line Total Production Expense are taken or derived by dividing the expenses by the number of cubic feet of gas sold. Mr. Moeran and I agreed on those figures.

Q. What figures do you mean?

A. There is no question on anything below that line.

Q. Below which line?

A. The total operation expense. I believe we check up the figure there. The figure in the cost per holder per M cubic feet made is the figure arrived at by dividing the production cost by the make. The figure in between, as I explained, was the figure derived by subtraction, and naturally any difference in the figure of cost per holder per M made would affect the deduction.

1830 Mr. Neumann: I do not think that is quite clear on the record, what he means.

The Master: Yes, you need not worry about that.

Q. Take your item boiler fuel 2.23, have you got the income from residuals in there?

A. I told you before that I had, yes.

Q. How?

A. As a deduction against boiler fuel.

Q. And in your item right above that for miscellaneous 4.68, taking the year 1909, for example, you also have included in your operating revenue the income from residuals; is that correct?

A. That is correct.

Mr. Goetz: That is all.

(Witness excused.)

Adjourned to Wednesday, June 16, 1920, at 9:30 o'clock A. M.

Next Complainant's Exhibit 105.

Next Defendants' Exhibit A-92.

1831

NEW YORK & QUEENS GAS COMPANY

vs.

CHARLES D. NEWTON, &c., et al.

Before Abraham S. Gilbert, Special Master.

New York, June 16, 1920.

Met pursuant to adjournment.

Present:

Mr. Ransom, Mr. Vilas and Mr. Goetz, of Counsel for Complainant.

Mr. Chambers, Mr. Tobin and Mr. Cunamings, of Counsel for Defendant Newton.

Mr. Newmann, of Counsel for Defendant Lewis Nixon, Public Service Commissioner.

It is hereby stipulated by and on behalf of the parties to the above cause, that the signatures of witnesses appearing before the

Master, to their respective depositions, be waived; and that the filing of the original exhibits in the office of the Clerk of the Court be also waived.

Dated New York, June 7, 1920.

BENJAMIN COHEN recalled:

Direct examination.

By Mr. Neumann:

Q. Mr. Cohen, have you prepared a schedule which you have numbered 8?

A. I have.

Q. And what are the sources from which this schedule was prepared?

A. The source is the operating ledger and operating journals of the New York & Queens Gas Company, and underlying records of the company.

1832 Q. What does this schedule purport to show?

A. It shows the amount of fixed capital retired in the years 1909 to 1919, and the charges made for the credits on retirement.

Q. And the foot notes which you have there, A, B, C and D, are items that are in the books?

A. The foot notes explain items on the books in the best way I could explain them.

Q. This scheme is correct, is it?

A. I believe it to be correct.

Mr. Neumann: I offer this in evidence.

Mr. Ransom: I object to it as made up on a basis that it is very difficult to understand. I only got a copy of this exhibit very late yesterday afternoon. I am entirely frank to say that having spent—

The Master: That was supposed to have been given to you not later than Saturday morning.

Mr. Ransom: Yes.

Mr. Neumann: I didn't get it myself until yesterday, and I sent it to Judge Ransom as soon as I got it.

Mr. Ransom: I got it about 3:30 or 4 o'clock in the afternoon, and, having spent some time trying to understand it, I am perfectly frank to say that I do not.

Mr. Neumann: That may not be our fault.

Mr. Ransom: It is not necessarily a reflection on the exhibit.

Mr. Neumann: It may be due to causes within yourself.

Mr. Ransom: Yes.

The Master: What is this supposed to be, Mr. Cohen?

1833 The Witness: It shows the retirement of fixed capital year by year, and also by accounts down below it shows what accounts they charge for retirement. It shows the amount charged

to accrued amortization of capital, renewals and replacements, surplus, materials and supplies, recoveries and reductions in cost, consumers, and operating accounts.

Mr. Ransom: In some wonderful way they have endeavored to whittle away the company's capital account. Usually I can understand their methods, but for once I cannot even understand what they are trying to do.

The Master: I will take it because I do not understand it. Perhaps I may after cross examination.

Mr. Ransom: I may understand it eventually.

Mr. Neumann: What was that comment that the Master made?

The Master: I say I cannot understand it until somebody cross examined Mr. Cohen.

Mr. Ransom: Will you take it subject to a motion to strike out?

The Master: Yes. I probably won't strike it out; I will probably let it stand.

Mr. Ransom: Exception.

Paper received in evidence and marked Defendants' Exhibit A-92.

Q. Have you prepared a schedule which you have numbered 13?

A. I have.

Q. What does that schedule purport to show?

A. It shows the analysis——

The Master: No, it purports to show.

1834 A. (Continued.) The analysis of the account "Interest during Construction."

Q. Where is this information taken from?

A. It is taken from the books of the company.

Q. And it is correct, is it?

A. I believe it to be correct.

Mr. Neumann: I offer this schedule in evidence.

Mr. Ransom: I object to it on the grounds already indicated. I have not had time to analyze it, having received it late yesterday afternoon.

Mr. Ransom: Exception.

Paper received in evidence and marked Defendants' Exhibit A-93.

Q. Mr. Cohen, have you likewise prepared a schedule which you have numbered 14?

A. I have.

Q. And what does that schedule purport to show?

A. Analysis of the account, "Engineering and Superintendence," on the books of the New York & Queens Gas Company.

Q. And all of these items and entries are taken from the books as indicated by you on the first column, is that correct?

A. They are taken from the books. I indicated the journal folio numbers in the first column, and wherever the books refer to underlying records we used such records.

Q. This schedule is correct, is it?

A. I believe it to be correct.

Q. It was prepared by you or under your direction?

A. That is right.

1835 Mr. Neumann: I offer this schedule in evidence.

Mr. Ransom: I make the same objection.

The Master: Objection overruled.

Mr. Ransom: Exception.

Paper received in evidence and marked Defendants' Exhibit A-94.

Q. Mr. Cohen, have you prepared a schedule which you have numbered 15?

A. I have.

Q. And what does this schedule purport to show?

A. Analysis of the account, "Office Development, Douglaston Extension."

Q. And this data was all taken from the books of the company, was it?

A. It was taken from the books of the company and records underlying the books.

Q. The statement is correct, is it?

A. I believe it to be correct.

Q. And it was prepared by you or under your direction?

A. Yes, sir.

Mr. Neumann: I offer this schedule in evidence.

Mr. Ransom: May I just ask one question?

By Mr. Ransom:

Q. Where did you get this title, "Office Development, Douglaston Extension," which you have seen fit to put on this statement?

A. From the books of the New York & Queens Gas Company.

Q. You are willing to swear here that that is the title of the account on the books?

A. That is the title of the account on the books.

Q. What book?

1836 A. The New York & Queens Gas Company ledger; I don't remember the number.

Mr. Neumann: Have you the book in court, Mr. Ransom?

Mr. Ransom: I don't know.

The Master: You offer that paper?

Mr. Neumann: I offer it in evidence.

Mr. Ransom: I make the same objection, and I object to it on the particular ground that it appears from the books which are in evidence that the witness has seen fit to take out of the air or some worse place a title "Office Development, Douglaston Extension," which is not the account in the books or anything like it, and it works an intentional misrepresentation of the books of this company.

Mr. Neumann: He told you where he got it from.

The Master: He swears it is taken from the books.

Mr. Neumann: If we had the book here we would point it out to you.

Mr. Ransom: If some of your men were not working on it it would be here.

The Master: Did you see this title on the books yourself?

A. I think I did. I believe the way it is copied on the statement is taken from the books.

The Master: The paper is offered, objection noted, objection overruled and exception allowed.

Paper received in evidence and marked Defendants' Exhibit A-95.

Mr. Neumann: Your witness, Mr. Ransom.

The Master: You may cross examine.

1837 Mr. Ransom: I cannot cross examine this witness on these things now.

The Master: Cross examination suspended. Anything else?

Mr. Neumann: That is all of my schedules.

WILLARD F. HINE, recalled as a witness on behalf of the defendants, being duly sworn, testified as follows:

Direct examination

By Mr. Chambers:

Mr. Chambers: Now, as to Mr. Hine's qualifications, I would like to submit and the stenographer can write it out, if there is no objection, pages 7, 8, 9, 10, and to the end of folio 32 on page 11 of Mr. Hine's affidavit in the Central Union Gas Company case.

Mr. Ransom: I think in the case of a witness so slightly qualified or less, that that is not the proper method of procedure.

Mr. Chambers: Slightly?

Mr. Ransom: Slightly or less.

Mr. Chambers: That is your usual characterization of witnesses?

Mr. Ransom: With so slight relation to any important activities in the gas business.

Mr. Chambers: Well, I will be glad to use up the time then.

Mr. Ransom: All right.

Q. How old are you, Mr. Hine?

A. Thirty-four.

Mr. Ransom: I will concede that this witness is of the grade of cadet engineer, as testified to in the Consolidated case.

1838 Mr. Chambers: The concession is not accepted.

Q. What is your business, Mr. Hine?

A. Utility engineer.

Q. And what has your work in the last few years been devoted to principally?

A. To the gas business, gas engineering work.

Q. What position did you hold with the Public Service Commission of the First District?

A. From 1911 until the early part of 1919 I was chief gas engi-

ner of the Public Service Commission for the First District, State of New York.

Q. That makes eight years in the position of chief gas engineer?

A. Yes, sir.

Q. Was Mr. Ransom there as counsel to the Commission while you were there as Chief Gas Engineer, some of the time?

A. He was.

Q. That is, Mr. Ransom, who is counsel for the complainant company here?

A. Yes.

Q. Now, what work did you do, or what did your position call for while you were chief gas engineer of the Public Service Commission for the First District?

A. Well, I was in charge of all the gas engineering work done by this Commission. The work that was required was surveys of pressure conditions and other gas standard matters; analysis of cost extensions where such extensions were charged to capital, and it was intended to capitalize them by the issuance of stock or bonds which had to be approved by the Commission; examination of actual work done in connection with extensions and improvements in plants of the various gas companies in the District; examination as to the propriety of charging certain amounts to capital account in connection with these cases; also examination of estimates of the cost of proposed extensions to be made in connection with bond and stock applications, the necessity of the improvements contemplated and the cost of the same.

Q. Did you make appraisals of the properties of companies?

A. Yes, I made all of the gas appraisals that were made during the time I was with the Commission.

Q. Did you make investigations of service?

A. A great many of them.

Q. And the standard of service?

A. Yes.

Q. Were you in charge of the testing laboratories maintained by the Commission for testing the quality of gas for a time?

A. I was. I started these testing stations and was in charge of their operation after they were installed.

Q. You are a graduate of what university?

A. University of Wisconsin.

Q. With what degree?

A. Bachelor of Science and Electrical Engineering.

Q. In what year did you graduate?

A. 1907.

Q. From June 29, 1907, to May 31, 1909, you were with what company?

A. I was with the Laclede Gas Light Company of St. Louis.

Q. In what capacity?

1840 A. I was assistant to the superintendent at the Station A plant, and first was in charge of engines, boilers, and all other power plant equipment at the station, being responsible to the station superintendent for the maintenance of all such power plant ap-

paratus, that is, engines, boilers, pumps, elevators and other power plant equipment.

Q. Did you make any estimates of the cost and probable operating results for a new power plant equipment installed there or to be installed?

A. I made many such for contemplated changes, and had charge of the installation of such apparatus as was put in at this station.

Q. Were you in charge of the coal gas plant of that company at Station A?

A. I was at a later date.

Q. How many coal gas houses?

A. There were two of them.

Q. And with a capacity of how much, approximately?

A. Three million cubic feet per day.

Q. Were you at one time in charge of the water gas plant at Station A of that company?

A. I was.

Q. With what capacity?

A. From six to eight million per day.

Q. Six to eight million cubic feet a day?

A. Yes, sir.

Q. From June 1, 1909 to September 30, 1909, you were with what company, do you recall?

A. I was with the Kettle River Quarries Company of Madison, Illinois.

Q. In what capacity?

A. I was assistant to the Superintendent, in charge of night operation of the creosoting plant.

1841 Q. After that, in October, 1909, you returned to the Laclede Gas Light Company, did you not?

A. I did.

Q. And you stayed there how long, do you recall?

A. I stayed there until April, 1911.

Q. What were you in charge of then, on your second employment by the Laclede Gas Light Company?

A. I was assistant to the chief engineer, and in charge of the drafting room, and responsible to the chief engineer for all the design work done by the company, in general charge under him of new construction and reconstruction work. I was required to keep in touch with all of the work handled through the chief engineer's office, and also was in charge of the making and keeping of all gas mains records.

Mr. Ransom: May the record show that this witness is now reading instead of giving from his recollection, reading from a memorandum.

Q. You are not reading from a memorandum, Mr. Hine?

A. I was glancing at one.

Q. To refresh your recollection?

A. Well, just to facilitate matters.

Q. But nevertheless it is your recollection now that that is the fact, is it not?

A. Absolutely.

Q. Now, you were in charge of the designs, and in general charge of the construction of a new and modern coal gas house having a capacity of 3,000,000 cubic feet per day there?

A. Yes, I was in general charge of this work under the chief engineer.

1842 Q. Were you in charge of a meter shop and branch office?

A. Yes.

Q. And miscellaneous buildings?

A. A good many miscellaneous buildings and structures, and gas work improvements.

Q. How about a 7,500 kilowatt electrical plant?

A. I was in charge of the design of that electrical plant, and also the design and installation of a low pressure steam turbine, and the design of the plant, connections and layout of the plant.

Q. Were you in charge of overhauling and re-designing the construction of a great amount of works, pipe, and miscellaneous gas works equipment?

A. I was.

Q. Were you in practical charge of the inventory and appraisal of that company's property?

A. I was.

Q. And in that connection did you have available and use vouchers and cost records covering a very considerable portion of its property?

A. I did.

Q. Did you assist the chief engineer on various jobs that had to do with the valuation of the gas and electrical properties?

A. I did.

Q. While you were with the Public Service Commission of the First District, the public utilities companies over which the Public Service Commission had jurisdiction, did they comprise about 15 to 20 per cent of the manufactured gas produced in the United States exclusive of by-product coke oven gas?

A. They produced at least that much.

1843 Q. While you were with the Public Service Commission did you check the gas of all plants and main extensions made by gas companies where such improvements were financed by the issuance of stock and bonds?

A. Yes, with one exception I believe.

Q. Did these amount to millions of dollars?

A. They did.

Q. The work included the detailed checking of construction cost as shown by the company's books, vouchers and records, an examination of actual work done in order to ascertain the reasonableness and necessity of expenditures, and in order to be able to certify as to the propriety of charging same to capital account, did they not?

A. They did.

Q. Did you keep in touch with the operating and construction

costs and prices of gas works apparatus, the cost of construction material, the cost of material used for the manufacture of gas both in New York City and other parts of the country during that time?

A. I did.

Q. And have you ever since?

A. I have.

Q. Have you made studies and reports with respect to gas rates, gas pressure conditions, gas service standards, the quality of gas supplied, the operating cost, the estimated cost and necessity of plant and main extensions and so forth, and testified to the same before the Commission?

A. I have.

Q. Did you appraise the properties of the Brooklyn Borough Gas Company?

A. I did.

1844 Q. The Newtown Gas Company?

A. Yes.

Q. The Richmond Hill & Queens Gas Light Company?

A. Yes.

Q. The Woodhaven Gas Light Company?

A. Yes.

Q. The Jamaica Gas Light Company?

A. Yes.

Q. The Kings County Lighting Company?

A. Yes.

Q. These appraisals were in connection with rate cases or applications for the approval of the issuance of certificates, were they not?

A. They were; applications for bond and stock issues, the approval of bond and stock issues.

Q. Did this work of appraising the properties of these companies involve the preparation of inventories, and an examination and analysis of all expenditures charged to construction?

A. Yes, all expenditures charged to construction at least during the recent years.

Q. Did this work keep you in constant touch with the prices of gas works equipment of all kinds as well as with general construction cost?

Mr. Ransom: I object to that.

The Master: Objection overruled.

Mr. Ransom: Exception.

A. It did.

Q. Have you also done some work in a consulting capacity?

A. I have.

Q. Did you make an inventory and appraisal of a portion of the works of the Haverhill Gas Company of Haverhill, Massachusetts?

A. I did.

1845 Q. Did you make a complete inventory appraisal of the property of the City Gas Company of Norfolk, Virginia?

A. I did.

Q. And a study of that company's operating results?

A. Yes.

Q. Did you make a complete appraisal of the tangible property of the Minneapolis Gas Light Company of Minneapolis, Minnesota?

A. Yes.

Q. On more than one occasion?

A. I made an appraisal first as of July 1, 1918, and recently brought that up to date as of December 31, 1919.

Q. Did you also act as consulting gas engineer for the United States Bureau of Standards?

A. I did.

Q. Since March, 1918, what business have you been engaged in?

A. I have been associated with Milo R. Maltbie.

Q. Did you appraise the gas property of the Municipal Gas Company of Albany?

A. I did.

Q. That was a company with a capacity of about how much, do you remember, Mr. Hine, offhand?

A. No, I do not. They had three machines. They could probably have made about somewhere in the neighborhood of 4,000,000 cubic feet a day. They had no necessity for making that much.

Q. Do you recall that the sales of that company were approximately 6,000,000 cubic feet of gas a year?

A. It was.

1846 Q. I mean 600,000,000?

A. Yes, 600,000,000, you are right.

Q. 600,000,000?

A. Yes.

Q. Did you appraise the gas property of the Utica Gas & Electric Company of Utica, New York?

A. I did.

Q. Are you familiar with the various kinds of apparatus and facilities used by gas companies at the present time?

A. I am.

Q. Have you done any work in connection with the Watertown Gas Company?

A. I have.

Q. That is Watertown, New York?

A. Watertown, New York.

Q. Have you done any work in connection with the Ontario & Pavilion Natural Gas Company in the western part of the State?

A. Yes.

Q. Have you done any work on the appraisal of the property of the New York & Richmond Gas Company?

A. I have appraised, inventoried and appraised the property of the New York & Richmond Gas Company.

Q. Did you do some work in connection with the Consolidated Gas Company?

A. I did.

Q. And testified in that case?

A. I did.

Q. You testified in the case of the Minneapolis Gas Company?

A. Yes.

1847 Q. On two occasions, did you not?

A. No, one occasion.

Q. Recently?

A. Yes.

Q. You testified in the Municipal Gas Company case in Albany?

A. I did.

Q. And the Utica Gas & Electric Company of Utica?

A. Yes.

Q. Have you made an examination of the properties of the company known as the New York & Queens Gas Company?

A. Yes.

Q. The complainant company?

A. I have, the New York & Queens Gas Company.

Q. And did you go over there and make an examination of that company's plant located at Flushing?

A. I have been there several times, and was over there at the end of last week for a day.

Q. State, will you, Mr. Hine, generally, what you did do in relation to that company.

A. Well, I have done a great deal of miscellaneous work in connection with that company.

Mr. Ransom: That is objected to and I move to strike that out as vague and meaningless.

The Master: Yes, but I will let it stand.

A. (Continued.) In going over the inventory of the company's property that was submitted in evidence in this case, and in having same checked up in a general manner.

1848 By the Master:

Q. What do you mean "in a general manner"?

A. That is, spot checking rather than absolutely detailed checking, and an examination particularly of the cost of the company's property as shown by the books of the company.

By Mr. Chambers:

Q. Did you make an examination of the company's buildings?

A. I did.

Q. You had, had you not, a number of men working with you and under your direction and supervision?

A. Yes.

Q. On this work?

A. Yes.

Q. Those men were all working under your supervision and direction?

A. They were.

Q. Were they, some of them, engineers?

A. They were all engineers.

By the Master:

Q. What kind of engineers; there seem to be about a million different kinds of engineers floating around this country?

A. Young engineers; Mr. Goldthwait who graduated as an electrical engineer; he has done various engineering work, and he was making certain examinations for me, and there were two of the engineers employed by the Public Service Commission on work a great deal.

Q. What kind of engineers were they; who were they?

A. They were Mr. Zients.

Q. What kind of an engineer is he?

A. A practical electrical engineer.

1849 Q. You mean he is entitled to a degree as an engineer?

A. I could not say whether or not he has a degree; he has been working at engineering work I know.

Q. Who else?

A. Mr. Rode.

Q. Do you know whether he is a graduate engineer?

A. I do not; I think he is a graduate engineer but I am not certain.

Q. All you know about it, is, he has been doing engineering work for the Commission?

A. He has been doing engineering work for the commission for some time and also work in connection with the examination of the books.

By Mr. Chambers:

Q. Were there other men working on this work with you?

A. Mr. Unger, also an engineer.

By the Master:

Q. Graduate?

A. A graduate engineer but I do not know what his degree was, whether electrical, mechanical or——

Q. Civil?

A. Civil or not.

Q. Or gas?

A. Well, there is no gas engineering. There is a course in only one university.

By Mr. Chambers:

Q. And this work was performed by you and these engineers in May and June, or this spring?

A. Yes, recently.

Q. Did you make an appraisal of the buildings of this company, the New York & Queens Gas Company?

1850 Mr. Ransom: If your Honor please, I object to that on the ground that it does not appear that the witness has any possible qualifications and as immaterial and incompetent.

The Master: Objection overruled.

By the Master:

Q. Did you make an appraisal of the buildings?

A. I made an appraisal of the cost of these buildings.

Q. Of the cost? What do you mean by an appraisal of the cost of the buildings; what kind of an appraisal is that?

A. That is an appraisal of the cost.

Q. You mean the cost to reproduce?

A. No, sir.

Q. Of the original cost?

A. Of the original cost.

Q. You mean your estimate of what it cost them originally to build?

A. No. I set up figures. I can explain probably better by telling just what I did.

Mr. Chambers: I think if we can go on, we will show what it is.

The Master: We are going on right now, my way.

The Witness: The cost as shown by the books of the company.

The Master: Then I do not want your appraisal of that—next question. How else did you determine the cost?

Mr. Chambers: I object. I think you ought to let me develop this like you did Mr. Miller.

The Master: I am going to develop all that I want.

1851 Mr. Chambers: The same as you let Mr. Miller try to do.

The Master: I want to know what this witness is testifying to, whether he is testifying to what the books show or whether he is testifying to his opinion.

Mr. Chambers: We will bring that out.

The Master: I am going to bring it out now. What is it, Mr. Hine?

Mr. Chambers: I object.

By the Master:

Q. What is it you did; did you form an opinion as to what it cost them originally?

A. No.

Q. Or analyse the books, and are now stating what the books show?

A. Stating what the books show for property installed since 8/1/1904, and have used the figures shown in Complainant's Exhibit 96 for the property installed prior to 8/1/04 and still there.

Q. In other words, you took Complainant's Exhibit 96 showing the amount expended prior to 1904 and yourself made an inspection of the books as to expenditures made since 1904; is that the idea?

A. Yes.

The Master: That is not an appraisal, Mr. Chambers. He is now purporting to testify what the books show.

Mr. Chambers: Why did you not say that when Mr. Miller was on the stand?

The Master: It doesn't make any difference what I said or didn't say. I am not accepting Mr. Miller's statement of his opinion as to costs when he testified as to what the books show.

1852 By Mr. Chambers:

Q. Well, as to buildings, Mr. Hine, what figure did you use for buildings installed prior to 8/1/04?

The Master: He says he took the book figures since 1904.

By Mr. Chambers:

Q. What amount was that you took for buildings installed prior to 8/1/04 from Exhibit 96?

Mr. Ransom: I object to that.

The Master: Objection overruled.

A. \$17,500, shown at page 2.

Q. Have you prepared a table 10 on buildings?

A. I have.

Q. In that you set forth that figure you have just mentioned for buildings installed prior to 8/1/04?

A. Yes.

Q. Next, you included some figure for the new generator house since that time?

A. Yes.

Q. You have set forth that amount in this table?

A. Yes; \$1,452.75.

Q. And what is that made up of, the figure for the new generator house; what is it for?

A. Well, that was for various additions to practically all of these buildings that have been added since 1904, or additions. There were a few small buildings, and these were various expenditures on account of those additions as shown by the books.

Q. Now, the exhaustor room?

A. The same thing, \$692.28.

Q. The pump house?

A. \$43.02.

1853 Q. And the coal bin, I will not ask you to give the amount, the same for the coal bin, the two-story?

A. Yes, most of these being just additions.

Q. And the coal bin, one-story?

A. The same thing.

Q. And the boiler house?

A. The same thing.

Q. The oil house?

A. Yes, the same thing.

By the Master:

Q. Mr. Hine, did Mr. Miller in his exhibits show the same figures?

A. He did.

Q. Did you change them in any way?

A. I did not.

By Mr. Ransom:

Q. Did you change the figure for the generator house?

A. No.

The Master: I want to know where there is any issue.

Mr. Chambers: I will show you in a minute.

By Mr. Ransom:

Q. What is your figure on that?

A. \$1,452.75.

The Master: Let us get to the issue, Mr. Chambers.

Mr. Chambers: I cannot until I show how we start. I have to develop this.

By Mr. Chambers:

Q. Now, in this first column, Mr. Hine, of Table No. 10, you set forth the items, some of which we have already mentioned?

A. Yes.

1854 Q. I mean the description, what they are?

A. Yes.

Q. And in the second column the cost?

A. The cost in the second column.

Q. In the manner you have just described?

A. Yes.

The Master: Have you got a copy of this paper you are looking at, Mr. Chambers?

Mr. Chambers: Yes.

The Master: Let me see it; I can follow you better.

By Mr. Chambers:

Q. Now, in the second column what have you done, Mr. Hine, as to each one of those items?

A. Set forth the cost.

Q. In the third column?

A. I have——

By the Master:

Q. Just a minute. This cost total of \$46,217.51 agrees with Mr. Miller's table of costs for the same items?

A. I believe it does, yes.

Q. Well, who would know?

Mr. Cummings: Anybody who checked that would know.

The Master: But this witness ought to know whether it tallies or not.

The Witness: That checks with Miller's.

By Mr. Chambers:

Q. In the third column, what have you done, Mr. Hine?

A. I have set forth the accrued depreciation.

By the Master:

Q. What do you mean by accrued depreciation?

A. That is the depreciation due to all causes, such as inadequacy, the progress of the art, wear and tear.

1855 Q. You mean observed?

A. No, I mean the depreciation due to all causes.

Q. You mean that this building, for instance, the last item, the tar tank, 1917, \$241.21, you looked at it and you found it had gotten rusty and it is old and obsolete and some other things, and therefore you do not believe it is worth as much as when it was new?

A. No not exactly that. I believe that the age of the item is the best measure of the depreciation.

Q. Well, then, this figure of depreciation is an arbitrary figure?

A. It is my estimate.

Q. Without regard to any observed conditions?

A. Well, yes; it takes into account the observed condition also; it takes into account all of those conditions.

Q. Did you use the same percentage of depreciation all the way through here?

A. No, it varies with different items. For instance, on that small tar tank, the estimated useful life and service was taken as twenty-five years. In connection with that drip in 1917, it is fifty years; so for brick structures. The estimated use or life of service was taken as fifty years, and on the brick structures as twenty-five years.

Q. But your depreciation item is based entirely upon your estimated loss of the particular article?

A. It is.

Q. Not with reference to the particular condition in which it was when you estimated it?

A. Not a particular condition of the particular item, but after an inspection of the whole thing, because if a plant was not
1856 maintained, the depreciation and the useful life of service would be much shorter, and that must be taken into consideration.

Q. Was this plant in good condition?

A. This plant I would say is well maintained, generally speaking.

Q. So that the record may be perfectly clear, and I think everybody understands the point in this connection, what you did was, you went over and looked at the plant, you reached the conclusion that it was well maintained and in good condition and being well

maintained and in good condition and you fixed the reasonable life of the various items as in your judgment they should develop, in other words, you thought a tar tank of this kind ought to last twenty-five years?

A. On the average.

Q. And a drip tank, whatever it was, fifty years?

A. Yes, on the average, yes.

By Mr. Chambers:

Q. If well maintained?

A. If well maintained.

The Master: He says it is well maintained; he assumed that it will be well maintained.

The Witness: I did.

Mr. Chambers: He said it would not last so long if it was not well maintained.

By the Master:

Q. That being so you arbitrarily fixed the amount of depreciation based upon the length of time that you think this thing will live in the light of the number of years that it has already been in use?

Mr. Chambers: Just a minute, Mr. Hine. I object to the 1857 Master's question on the ground that it is incompetent, immaterial and irrelevant, and it is cross-examination, and I object strenuously to the use of the word "arbitrary," because he did not.

The Master: Objection overruled.

Mr. Chambers: Exception.

The Master: The Master is going to find out just how the witness figured his depreciation so that it can be squarely on the record. The Master probably will find as he did in the Consolidated case that there ought to be no deduction for depreciation, but he is going to get this record straight; that is all there is about it.

Mr. Chambers: I cannot help what the Master will find. The courts have laid down the rule which should be followed by the Master. Whether the Master wants to disregard it or not is another question.

The Master: I am going to get the record right so that if the Court reverses me it will know what it is talking about.

Mr. Chambers: Exception.

The Witness: I do not think I did it in an arbitrary manner.

By the Master:

Q. What you did was this. For instance, the tar tank, you figured ought to have an average life of twenty-five years?

A. Yes; tanks of that description.

Q. It is now two years old?

A. Two and a half.

Q. So that you figured it has depreciated two and a half twenty-fifths?

A. Yes.

1858 Q. Ten per cent?

A. Ten per cent.

Q. Is that so?

A. Yes.

Q. Now, the drip, you figured fifty years?

A. Fifty years.

Q. That has been in existence two and a half years?

A. Yes.

Q. So you figured it as two and a half fiftieths?

A. Yes.

Q. And so as to the other items?

A. Yes.

Mr. Ransom: Of course, your Honor will allow me a general objection and exception to this whole line of testimony of this witness, on the ground that he is not in any way qualified to do what he has undertaken here to do—not qualified to form any estimate of the life of the property, he has not any familiarity with this particular property, in any adequate degree, and what he has attempted to do is unsound, academic, theoretical, contrary to law and contrary to the facts to which he has himself testified.

The Master: Objection overruled.

Mr. Ransom: Exception.

By Mr. Chambers:

Q. Are you familiar with the rules laid down in the various decisions of the United States Supreme Court—

Mr. Ransom: Objected to as immaterial.

The Master: The question has not been finished yet.

Q. (Continuing:) —on depreciation?

1859 The Master: Objection sustained.

Mr. Chambers: Exception.

Mr. Cummings: You ought to let him testify whether he is familiar with it.

The Master: What is that?

Mr. Cummings: You should let him testify whether or not he is familiar with it.

Mr. Ransom: He has shown he is not familiar with it.

Mr. Cummings: There would be no harm in that.

The Master: Next question, Mr. Chambers.

Q. Have you read the decision of the Court of Appeals and of the Appellate Division of this State in the case of *People ex rel. Kings County Lighting Company versus Wilcox and others*?

Mr. Ransom: Objected to as immaterial.

The Master: Objection sustained.

Mr. Ransom: The witness has either shown that he has not read it or else disregarded it.

Mr. Chambers: Exception.

Q. Have you read the decision in the case of Knoxville Water Company versus Knoxville, reported in 212 U. S., page 1?

Mr. Ransom: Objected to as immaterial.

The Master: Objection sustained.

Mr. Chambers: Exception.

The Master: And Mr. Chambers is directed not to ask any further questions on that line, because the Master will not permit this witness to state whether he has read any of the decisions of the courts.

Mr. Chambers: I take an exception.

Q. In the last column on Table 10, what does that figure or the figures there represent, Mr. Hine?

1860 A. The cost less the depreciation. That is, it is the cost as shown in the second column less the depreciation as shown in the third column—the difference between those two.

Q. Is that table correct?

Mr. Ransom: Objected to.

The Master: What do you mean correct?

Mr. Chambers: Just what I say.

Mr. Ransom: It is academic and theoretical.

The Master: You mean does that table correctly set out his claim of depreciation and cost less depreciation. That is all you mean by it, isn't it, Mr. Chambers?

Mr. Chambers: His estimate.

The Master: Yes. Overruled.

Mr. Ransom: Exception.

A. It does. It is correct and does represent my opinion.

Mr. Ransom: I move to strike out "It is correct."

The Master: Overruled.

Mr. Ransom: Exception.

Q. That is as of December 31, 1919, Mr. Hine?

A. Yes, sir.

Mr. Chambers: I offer Table No. 10, just described by Mr. Hine, in evidence.

Mr. Ransom: Objected to as incompetent, irrelevant and immaterial.

The Master: Have these tables been furnished you, Mr. Ransom?

Mr. Ransom: No, of course not.

The Master: Why did you not let Mr. Ransom have copies of these tables to save time?

1861 Mr. Chambers: Just a minute, do not be hasty. Because they were just finished in time to be testified to today.

Mr. Ransom: It was well timed.

The Master: I will give you all the time that you want, Judge Ransom, to look them over.

Mr. Ransom: Well, I object to the receipt of this in evidence on the ground it is incompetent, irrelevant and immaterial, the qualifications of the witness to do any such academic and theoretical thing for the purpose of destroying this company's investment and the right to earn a return upon the investment has been in no way shown. The table is made up on an abstruse theory which is contrary to law and contrary to fact, contrary to what the witness has himself testified to regarding this company's property, in so far as his casual knowledge of it extends. It is not within the scope of any issues in this case, and no possible basis for the application of any such academic and destructive theory of depreciation to investment.

The Master: I will overrule the objection.

Mr. Ransom: Exception.

Mr. Chambers: We are just puncturing the inflated values here, that is all.

The paper was marked Defendants' Exhibit A-96.

Mr. Cummings: Why don't you limit the complainants as to time, the same as you did the defendants?

The Master: Because the complainant has uniformly and throughout this case handed the exhibits to the defendants weeks and 1862 months before the exhibits were used, and the defendants have not done it.

Mr. Cummings: You ought not to say that of the Commission, because I think the Commission have used their best efforts in that way.

The Master: But the Attorney General has not, anyway.

Mr. Chambers: The Attorney General did not as to this particular paper.

Mr. Ransom: Nor any others. The Attorney General has not furnished us with copies of anything in this or any other case.

Mr. Chambers: That is not correct.

Mr. Ransom: May the record show my request for a copy now, at least.

The Master: I am going to see that you get it now.

Mr. Chambers: I am glad to have on the record how we are being crowded here. We have not the time to give them exhibits.

Mr. Cummings: Complainant has been given unlimited time.

Mr. Chambers: I hand the other side Table No. 10.

Mr. Ransom: This is one copy.

Mr. Chambers: That is the copy of Exhibit A-96.

Mr. Ransom: I ask for two copies, as we have always furnished you, at your request, two copies.

Mr. Chambers: Some of the exhibits in this case we have not at all at the present time.

Mr. Ransom: They must be your own.

1863 Mr. Chambers: They are yours. Some of them the Attorney General has not at all, to say nothing of giving them to us in advance.

Mr. Ransom: If you had been here you would have had them.

The Master: Proceed, Mr. Chambers.

Q. Did you prepare another table, Mr. Hine, designated for convenience Table No. 11?

The Master: Mine is marked 11-A. He apparently has two sheets, 11-A and 11-B.

Mr. Chambers: Two sheets, A and B.

A. Yes, sir.

The Master: It is one table, is it?

The Witness: One table on two sheets.

Q. Consisting of two sheets, A and B?

A. Yes, sir.

Q. The first column under the title "Items" describes the property, does it not?

A. It does.

Q. And this table consists of apparatus and piping only, does it not?

A. Yes, sir.

Q. Under the title "Cost of that portion of apparatus and piping installed prior to 8-1-04," where did you get that figure?

A. From the complainant's Exhibit 96.

Q. And after that where did you get your figures under "Cost"?

A. Those are the costs as shown by the books.

By the Master:

Q. I assume those figures tally, then, with Mr. Miller's figures?

A. They do.

Q. A total cost of \$229,000 odd?

Yes, sir.

1864 By Mr. Chambers:

Q. The next column, "Depreciation," that represents what?

A. The accrued depreciation as of December 31st, obtained in the same manner and using the same process as in connection with Table 10.

Q. And the last column, "Cost Less Depreciation?"

A. That is the difference between the cost and the depreciation.

Q. And is this table correct, and does it represent your estimate of the apparatus and piping as of December 31, 1919?

A. It represents the cost and my estimate of the depreciation and the cost less depreciation, as I have described it.

Q. And is it correct?

The Master: You have asked that too many times.

A. Yes.

The Master: You offer it in evidence, with the same objections ruling and exception.

Mr. Chambers: I offer in evidence Table No. 11, consisting of two sheets, A and B.

Mr. Ransom: The two sheets are to be marked as one exhibit?

The Master: Yes.

Marked Defendants' Exhibit A-97.

The Master: In all of these exhibits did you take the costs as they appeared from Exhibit 96 and the books?

The Witness: Yes, sir.

The Master: Now Table 12, Mr. Chambers.

Q. Mr. Hine, referring to Table No. 12——

The Master: There seems to be three sheets to that, A, B and C.
1865 Q. That is what, miscellaneous?

A. Those are the miscellaneous items, comprising store equipment——

The Master: Office equipment, stable and garage equipment.

The Witness: Office equipment, stable and garage, laboratory equipment, tools and appliances, some miscellaneous items summarized on the bottom of the third sheet.

Q. You obtained the figures there in the same way as you did for the other exhibits?

The Master: As to original cost?

A. Yes.

By the Master:

Q. And your depreciation item you reach in the same way?

A. In the same manner.

Q. And your depreciation cost is the result of the same computation?

A. It is.

The Master: You offer the Table No. 12, three sheets, Mr. Chambers?

The Witness: I beg pardon, but there is an error on office equipment, on the first sheet, and the figure there should be 1909 instead of 8-1-04, in the first line.

Q. Installed prior to 1909?

A. Yes, that is shown by Exhibit 96 as an inventory figure as of that date.

The Master: The offer is made of this Exhibit 12, three sheets, Mr. Chambers?

The Witness: I beg pardon, but there is an error on office equipment, on the first sheet, and the figure there should be 1909 instead of 8-1-04, in the first line.

1866 Q. Installed prior to 1909?

A. Yes, that is shown by Exhibit 96 as an inventory figure as of that date.

The Master: The offer is made of this Exhibit 12, three sheets A, B and C, with the same objection, ruling and exception.

Mr. Chambers: I offer Table 12 in evidence, consisting of three sheets.

The Master: I have offered it for you.

Mr. Chambers: But I would like to offer my exhibits.

Mr. Ransom: It is offered over my objection and exception.

Marked Defendants' Exhibit A-98.

Mr. Chambers: I want to have you kind of consider these as you go along. Look at that Ford runabout.

The Master: What is there to consider any more about Table 12 than there is about Tables 11 and 10? They are all upon the same theory.

Mr. Chambers: The Ford runabout, you might be interested in that.

The Master: They are all on the same theory.

Mr. Chambers: 1913 Ford runabout is not worth today any \$546.50.

The Master: I am not quite sure about that. If that Ford runabout is in good condition I am apt to buy it myself at that price.

Mr. Cummings: It is only valuable as an antique, that is all.

The Master: No, I think if it is in good condition I would buy it now—if the company would sell it for \$546.

1867. Mr. Ransom: Especially if it is rebuilt in all its wearing parts.

The Master: You show me a good Ford for \$546 and you can sell it to me now, if it is in good condition and in good shape.

By Mr. Chambers:

Q. Table No. 15, Mr. Hine, is Buildings and Apparatus, debits and credits, 1904 to 1919?

A. Yes, sir.

Q. Will you describe what that shows?

A. That shows the debits and credits on account of Buildings and Apparatus for the period 8-1-04 to 1919, inclusive, year by year, as shown by the books.

Q. Down to what, as shown by the books?

A. Well, these figures are all as shown by the books and there is a note below which shows the accounts which are included under that category Building and Apparatus.

The Master: Did you include it?

The Witness: Yes.

Q. The column "Debits" represents the debits?

A. The debits, yes.

The Master: Yes, I think that must be so, but what does debits mean, added to or taken from?

The Witness: That means added to the accounts, the increases in the book figures.

Q. And the credits?

A. The credits are the deductions from the book figures. Now, in

certain of the years prior to 1909 those credits may include adjusting entries—that is, which really would be set against the debits and reduce the debits. It would make no difference in the net result,

but it was impossible to make the analysis to find out what 1868 were real credits and what were adjusted credits in this case.

Mr. Ransom: I move to strike out the witness' answer. He has not shown himself in any way qualified to pursue this method of assassination. He is not an accountant and that is not descriptive.

The Master: I will take it.

Mr. Ransom: Exception.

The Master: I shall expect Mr. Hine as soon as he is finished with his direct examination to hold himself in readiness to produce his working sheets for the inspection of counsel for the complainant and their accountants or experts, whoever they may be, in order to save time on cross-examination here.

Q. Is this table correct, Mr. Hine?

Mr. Ransom: Objected to.

The Master: I will sustain that objection.

Mr. Chambers: Exception.

Mr. Ransom: He is not an accountant and has not even undertaken to describe himself as an accountant.

Q. Is it accurate?

The Master: Same ruling.

Mr. Chambers: Exception.

The Master: I am letting his statement stand that he looked at the books and he is taking these entries off, but I am not going to let him testify that he is an accountant.

Mr. Ransom: And he has not testified to that.

Mr. Chambers: I object to that. I call your Honor's attention to the fact that you are making some very—well, I do not know just what word to use.

1869 The Master: Use any word you like.

Mr. Chambers (continuing): —arbitrary rulings, that are not in accordance with any decision I ever heard of.

Mr. Ransom: This witness has not even stated that he examined the books and vouchers.

Q. Did you, Mr. Hine, make a check on the books?

A. I have made a check on the books, in comparison with the reports and exhibits in evidence. I did not do all of the detail work in connection with these. They check into the balances and I prove they are correct without doing the detail work.

Mr. Chambers: I offer in evidence Table No. 13.

Mr. Ransom: Objected to on the ground that the witness by no possibility is qualified to do any such thing as this; he is not an accountant, has not had any accountant experience. He has undertaken an intricate process which no accountant would resort to or

even try to follow. I also object that it has not any bearing on the issues in this case.

Mr. Chambers: How ridiculous and silly that is.

Mr. Ransom: Let me finish my objection once, please.

Mr. Chambers: I would like to stop you a minute, because it is ridiculous to lumber up the record with statements of that sort.

Mr. Ransom: What your Honor is doing in effect by your ruling is saying that anything the mind of this witness Miller or anybody else can get up can be dragged into this record, and the risk is 1870 of getting rid of it and exposing the fallacy and unsoundness, that must be upon the complainant, without any authentication of its correctness before it goes in.

Mr. Chambers: I think counsel ought to deal with the courts in a fair way. In answer to that I will say that Mr. Miller pretends to do the same thing here, and counsel here is not dealing with the court fairly and justly. Mr. Miller's 96 does the same thing.

Mr. Ransom: That is not so.

Mr. Chambers: Mr. Ransom, there ought to be some rule that would compel counsel in a given case to stick to the same ruling that he invokes when he presents his evidence—consistent, you cannot be that.

Mr. Ransom: If the counsel for the Attorney-General ever took the oath at the Bar, there ought to be some method of dealing with him.

Mr. Chambers: You are only a cadet lawyer, and you better try it again once more.

The Master: I do not think that Mr. Hine has qualified as much of an accounting expert.

Mr. Chambers: Mr. Miller did the same thing. You sat here and you said nothing whatever when Mr. Miller presented the very same thing, and I show here by an overwhelming lot of testimony that Mr. Miller was not competent, not only to take the figures off the books, but to give any testimony here on the value of property.

Mr. Ransom: Mr. Miller did a very different thing. He ascertained from the vouchers and the records the cost of the 1871 property which he found there was used. Mr. Miller did not undertake to do an accounting process of the intricate sort, which some one has done for this witness, and which is coming in here, if this document is admitted—coming in without any authentication of any kind. Debits and credits—he does not even know that the thing which he calls a debit is a debit, or that the thing which he calls a credit is a credit. Mr. Miller actually keeps books in a gas business.

Mr. Deegan: Mr. Hine looked over more books than Mr. Miller ever kept.

Mr. Chambers: Some day we will have these cases heard in full some day. I just want to warn counsel and the court of that.

The Master: Why the necessity of a warning to the court?

Mr. Chambers: Why, because I want the same rule given to us as was given to the other side. Well, I won't say that, if we have

just half, if you would apply half the rule that counsel asks you to invoke in his favor, in our favor, we would be satisfied.

The Master: I think I will take it.

Mr. Ransom: Exception. It puts a burden on this complainant that has never been put on a complainant in any case at law, the burden of taking something absolutely unauthenticated by any qualified testimony, and saying to us that we must find out what word and wonderful things some one did to this witness, and exposing here its fallacy and unsoundness.

1872 The Master: I think I had better take it.

Mr. Chambers: It is taken right from your books.

The Master: I have ruled on it.

Paper received in evidence and marked Defendants' Exhibit A-99.

Q. Did you prepare another table, Mr. Hine, designated for convenience as Table 14?

By the Master:

Q. Well, you prepared a number of tables along the same line, Mr. Hine?

A. I did.

Q. I see Tables 14, 15, 16, 17 and 18. They are all along the same line?

A. They are.

Q. Applicable to different kinds of property?

A. Yes, different accounts.

Q. But they are all done in the same way precisely as you did Table 13?

A. Well, something should be said about Tables 15, 16, 17 and 18.

Q. Say it.

A. In that there are columns showing adjusting credits and retirements. Now, the adjusting credits are credits which would represent the debits, that is, there were overcharges and adjustments of several accounts, payments made by consumers, the credits.

Q. The adjusted debit is the balance after adjusting the credits against the total?

A. It is taking the adjusting credits from the total debits so it would make no change in the net result. That is, instead of having less on the credit side where the retirements would be based on the books, you have a lesser amount on the debit side, so it
1873 leaves the same increase in property value, only they are not treated as retirements.

Mr. Ransom: I submit that this witness is not qualified for any such fantastic thing, to lumber up and confuse this record.

Mr. Chambers: I offer Table 14 in evidence.

Mr. Ransom: Just look at the kind of thing he is trying to do. I do not think it would be permitted, even if he was an accountant.

Mr. Chambers: I ask if Table 14 is correct.

The Master: It is claimed that these figures are merely based upon the books, I suppose. That is your testimony?

The Witness: Yes.

Mr. Ransom: He has undertaken to take the books, and then mark them up, and mark them down, and mark them around, and mark them out.

The Witness: I have done no such thing whatsoever.

The Master: I will take these. Table 14 is objected to, the objection is overruled, and exception allowed.

Paper received in evidence and marked Defendants' Exhibit A-100.

The Master: Now, you offer Table 15, Mr. Chambers?

Mr. Chambers: I offer Table 15 in evidence. I would like to ask a question about Table 15.

By Mr. Chambers:

Q. What is known as the Douglaston Extension, will you please explain that, Mr. Hine?

1874 A. Those were the charges on account of the Douglaston

Extension. They are included in the total debits, the adjusting credits and the adjusted debits for the year 1919, and they are also set forth separately below.

Q. Is that table correct?

The Master: I have asked him one question that covers all that.

Mr. Chambers: Does that relate to all these tables?

The Master: Yes. He says that as to all these tables the figures set down are correctly taken from the books.

Mr. Ransom: He has not quite said that, I believe.

The Master: Is that what you said, Mr. Hine?

The Witness: I believe I said that; at any rate I meant that.

Paper received in evidence and marked Defendants' Exhibit A-101.

The Master: Now, you offer Table 16 in evidence?

Mr. Chambers: I offer Table 16 in evidence.

Mr. Ransom: I object to it on the same grounds.

The Master: Objection overruled.

Mr. Ransom: Exception.

Paper received in evidence and marked Defendants' Exhibit A-102.

Mr. Chambers: I offer Table 17 in evidence.

Mr. Ransom: I make the same objection.

The Master: Objection overruled.

1875 Mr. Ransom: Exception.

Paper received in evidence and marked Defendants' Exhibit A-103.

Mr. Chambers: I offer Table 18 in evidence.

Mr. Ransom: I make the same objection.

The Master: Objection overruled.

Mr. Ransom: Exception.

Paper received in evidence and marked Defendants' Exhibit A-104.

Q. In Tables 16, 17 and 18 you have treated the Douglaston Extension in the same manner you described a moment ago?

A. I have.

Q. Now, you have prepared another table designated for convenience as Table 20, have you?

A. I have.

Q. That is "Cost of Fixed Capital 1904 to 1919," is it?

A. It is.

Q. Will you please describe what this table represents?

A. This represents the cost of these various subdivisions of the property that I have set up, starting with the figures as of December 31, 1919, which was shown by the preceding tables, and then working back from the book debits and credits to the date as of August 1, 1904, by subtracting the additions, and adding on the deductions as I went back. The Douglaston Extension is set forth separately.

The Master: I see the figure there is \$128,000. I thought it was \$146,000.

The Witness: That figure that was put in evidence took it beyond December 31, 1919. It went up to some time in 1920.

1876 The Master: Oh, I see.

Q. Additions and deductions as shown in the preceding tables?

A. Yes.

The Master: What is the point? Your figures show the cost of the fixed capital as of December 31, 1919, to be \$935,699, plus \$128,670, is that right?

The Witness: Yes, including the Douglaston Extension. That is exclusive of land—there is no land included in this table.

The Master: Your testimony is that in the way you have described, you reach the conclusion that the company's fixed capital other than land, on December 31, 1919, was \$1,064,000?

Mr. Ransom: That is exclusive of franchises and rights.

The Master: Yes.

The Witness: That is the cost of this property as set forth here, exclusive of land. There is depreciation in it. That is the cost.

The Master: A little over a million dollars?

The Witness: Yes.

The Master: For the tangible properties?

The Witness: Yes.

The Master: Exclusive of land?

The Witness: Exclusive of land.

Q. There is no working capital in there, is there?

A. No, and no engineering and superintendence.

The Master: And no interest during construction?

The Witness: No.

1877 The Master: And no taxes during construction?

The Witness: No.

Mr. Chambers: I offer Table 20 in evidence.

Mr. Ransom: I make the same objection.

The Master: Objection overruled.

Mr. Ransom: Exception.

Paper received in evidence and marked Defendants' Exhibit A-105.

Q. Did you prepare another table designated for convenience as Table 25?

A. I did.

Q. That is "Depreciation, 1904 to 1919?"

A. It is.

Q. Year by year?

A. Yes, sir, as of the end of the year, except for the first item, which is as of August 1, 1904.

Mr. Chambers: I offer Table 25 in evidence.

The Master: What is that depreciation? You say that this amount of \$214,569 under 1919 is to be taken from that \$935,699 on Table 20?

The Witness: Yes, I believe they should. That figure for 1919 is the summation of the figures shown on the first tables.

The Master: That is accrued depreciation, as you term it?

The Witness: Yes.

Mr. Ransom: I make the same objection to that.

The Master: Objection overruled.

Mr. Ransom: Exception.

Paper received in evidence and marked Defendants' Exhibit A-106.

1878 Q. Did you prepare another table designated for convenience as Table No. 30?

A. I did.

Q. That is "Cost of Fixed Capital Less Depreciation, 1904, to 1919?"

A. Yes.

The Master: Well, that is another computation based upon Tables 20 and 25?

The Witness: Yes, sir.

The Master: That shows the deduction of the accrued depreciation from the cost?

The Witness: Yes, sir.

The Master: You offer that in evidence?

Q. Is it correct?

The Master: Oh, I don't care about that.

Mr. Chambers: Exception.

Mr. Ransom: I object to it on the same grounds.

The Master: Objection overruled.

Mr. Ransom: Exception.

Paper received in evidence and marked Defendants' Exhibit A-107.

Q. Did you prepare another table designated as Table 31, "Fixed Capital, Including Engineering, from 1904 to 1919?"

A. I did.

Q. What does that represent?

A. This table shows the year, cost, depreciation, and the cost less depreciation, as shown in the preceding tables, plus the engineering that has been charged to capital accounts from 1909 to 1919, inclusive, plus 5% for engineering on the items of property that were installed prior to August 1, 1904, the engineering being depreciated on the same basis as the property was, the same average rate as the property depreciation.

1879 By the Master:

Q. In other words, you took the cost of these various years as they appeared in other exhibits, taking 1919 to illustrate?

A. Yes.

Q. Your other exhibits show a cost of \$935,699, without depreciation?

A. Yes.

Q. To that you added 5%, making \$955,641?

A. I don't believe I followed your first statement.

Q. Without engineering, the figures show for 1919, \$935,699?

A. Yes.

Q. To that you added 5% for engineering, did you?

A. No, I added the actual engineering charged on the books from 1909, and 5% for engineering prior to 1904.

Q. Then the difference between \$935,699, and \$955,641, is the engineering charges as shown on the books?

A. Yes.

Q. Is that correct?

A. That is right.

Q. That is, you have depreciated on the \$955,641?

A. Yes, it is depreciated just in the same manner, that is, the engineering is depreciated just the same as the property it applies to.

Q. Spread over the same number of years?

A. If the depreciation on the average for buildings, the accrued depreciation, was 20 per cent, the accrued depreciation on the engineering would be at that same rate, on the same basis.

1880 By Mr. Chambers:

Q. Did you find, Mr. Hine, that the engineering after 1904 was less than 5 per cent?

Mr. Ransom: I object to that as incompetent. The witness is not qualified to answer.

A. Oh, in connection with that there, the five per cent was added only to the buildings, apparatus and piping, and to the mains. There was nothing added for engineering to the miscellaneous items, or to services, meters and meter installation. This last question was what?

Q. Did you find the engineering after 1904 was less than 5 per cent?

Mr. Ransom: I object to that as incompetent.

The Master: Objection overruled.

Mr. Ransom: Exception.

A. Yes.

Mr. Chambers: I offer Table 31 in evidence.

Mr. Ransom: I make the same objection, and I object to it on the further ground that the witness is in no way qualified to prepare any such table or make any such estimate, or calculate any such rate of depreciation of engineering, whatever that may be. It is carrying a fantastic theory to a fantastic extreme.

The Master: Objection overruled.

Mr. Ransom: Exception.

Paper received in evidence and marked Defendants' Exhibit A-108.

Q. Did you prepare another table designated for the purposes of convenience as Table 32, being "Average Fixed Capital Including Engineering"?

A. I did.

1881 Q. What does that table represent?

A. Well, that table represents for the year 1919, for instance, the average of the figures shown on Exhibit A-108 for the beginning and end of the year, so it would be the average for the year 1918. The preceding table, Exhibit A-108 shows the cost as of December 31st. This is the average for the beginning and end of each year.

Mr. Chambers: I offer that table in evidence.

Mr. Ransom: I object to it as incompetent, irrelevant and immaterial, and on the other grounds already stated, and on the ground that there is no basis for any such average, nor any utility in any such average.

The Master: Objection overruled.

Mr. Ransom: Exception.

Paper received in evidence and marked Defendants' Exhibit A-109.

Q. Did you prepare another table, Mr. Hine, designated for convenience as Table 33, "Average Fixed Capital Including Engineering, 1909, but exclusive of Land?"

A. I did.

Q. What does that table represent?

A. That table represents the average as shown by Table 32, exclusive of the Douglaston Extension in one case, including the Douglaston Extension at half cost in the second case, and including the Douglaston Extension at cost in the third case, and in each instance it shows the cost, the depreciation, the cost less depreciation, and the average for 1919.

Q. Why did you include the Douglaston Extension at half cost?

1882 Mr. Ransom: I object to that as immaterial and incompetent. There must be some limit as to what this kind of a witness can do.

The Master: Objection overruled.

Mr. Ransom: Exception.

A. Because I was directed to prepare figures to show what that would amount to if constructed prior to the high prices existing during the war. My estimate is that it would cost about half what it did cost during the period of high prices.

By Mr. Ransom:

Q. Will you state who instructed you to do any such thing?

A. I was instructed by counsel to prepare such figures.

Q. By whom?

A. Mr. Chambers.

By Mr. Chambers:

Q. That is to say, it is your opinion that it would cost about half what it did cost if they had built this extension at pre war prices, Mr. Hine?

The Master: I am ruling that question out for the sole reason that it is a perfect waste of time, the witness already having made that very statement. I am not going to permit a question of that kind that simply repeats what a witness has already said.

Mr. Chambers: If it is in the record that he answered it, I don't want to ask the same question twice.

The Master: But you did.

Mr. Chambers: Hereafter it will be claimed that I didn't ask it and he didn't answer it, and hereafter it will be claimed that I didn't ask Mr. Hine if these tables were correct.

1883 The Master: Go on.

Mr. Chambers: I offer that table 33 in evidence, I will ask him if it is correct.

The Master: I won't allow that question.

Mr. Chambers: Exception.

Mr. Ransom: I object to it on the grounds previously stated.

The Master: Objection overruled.

Mr. Ransom: Exception.

Table received in evidence and marked Defendants' Exhibit A-110.

Q. Did you prepare another table designated for convenience as Table 34?

A. I did.

Q. "Average Annual Depreciation Requirement, 1904 to 1919"?

A. I did.

Q. What does that represent?

A. That represents on the basis of the lives assumed for each class of property, each class and kind of property, and each unit of property, where they were considered by units, and annual requirements that would need to be taken out of operating expenses in order to produce a fund which at the end of the average useful life of the property would represent its costs.

Mr. Ransom: Did he say taken out of operating expense?

The Master: Yes.

A. (Continuing.) That is, included in operating expense. The cost would have to be included, but not operating expense, not reducing operating expense, but increasing it.

The first column shows the year. The second column is the depreciation requirement average for each of the years, and 1884 in the third column it has been reduced to cents per thousand cubic feet of gas sold.

The Master: Does it vary?

The Witness: It does.

Mr. Chambers: I offer that Table 34 in evidence.

Mr. Ransom: I object to it on the grounds already indicated, and on the ground that it is academic and theoretical, and no warrant for any such thing in law or in fact, and contrary to the facts here shown. The company does not do any such thing, there is no requirement of law that any such thing should be done.

The Master: Objection overruled.

Mr. Ransom: Exception.

Paper received in evidence and marked Defendants' Exhibit A-111.

The Master: Without computing this accurately, just glancing over the figures, I see it runs as high as 7.27 in one year, and only in two or three years do you go below 6. Do you know what it averages? About 6½ cents, does it, through the years?

The Witness: I have not arrived at an average, but I should say it would be close to 6 cents.

The Master: Oh, it must be more than that.

The Witness: There are about five of them below 6.

Mr. Chambers: There are six of them below 6.

The Master: Of course I am guessing at it from glancing at the exhibits, but I should imagine it is between 6 and 6½ cents. 1885 That should be added to the cost of gas to take up the accruing depreciation?

The Witness: Yes.

The Master: So that throughout these years you would say that

this company, in addition to the ordinary repairs and replacements and the like, ought to have charged the consumers 6 or 6½ cents more for gas?

The Witness: In addition to repairs, not in addition to replacements. This only should take care of replacements. When they take out an engine for some reason or another, the fund would be charged with the cost of that engine.

The Master: My recollection is that they included in their accounts about 3 cents for replacements.

The Witness: I don't remember at the present time just what it was.

The Master: And you say by your exhibit that in addition to the 3 cents for replacements they ought to charge up about 6¼ cents or more to include accrued depreciation and replacements, and depreciate their plant every year as against that?

The Witness: They should lay aside that much to apply to accruing depreciation due to all causes to take care of the cost of property retired.

The Master: You did not suggest any such item in the Consolidated case, did you?

The Witness: I did not handle that end of it at all.

The Master: Well, you did not suggest any such thing, did you?

The Witness: No.

1886 The Master: You testified to accrued depreciation?

The Witness: I did, to accrued.

The Master: But you made no suggestion as to taking care of this company's accrued depreciation by charging the consumers more for gas?

The Witness: I didn't even make any computation as to what that would amount to. That was handled by another side.

The Master: I want to make it clear that, although you testified to accrued depreciation, you made no suggestions in that case that if I allowed accrued depreciation I could take care of the company's interest by charging more for gas.

Mr. Ransom: I maintained that that 3 cents was extremely low for replacements.

Mr. Chambers: Mr. Hine did not testify anything about it, of course, he did not cover that subject. He is covering it here.

The Master: Well, nobody made any such suggestion in the Consolidated case.

Mr. Chambers: Well, the burden is not on the defendants.

The Master: Oh, yes, when you are advancing a theory of accrued depreciation, and when I indicated that I would not follow any such item of accrued depreciation in the way it was presented, the logical thing to do was to present the kind of testimony that Mr. Hine is now presenting, that would indicate that the company, in some form or other should charge the consumer against this accrued depreciation.

1887 Mr. Chambers: In answer to that, I will say that to this day I have some additional testimony that I would like to present in the Consolidated case on a number of things. You will

find in the very closing paragraph that I took that position that we were not through. Your Honor is the last one that can complain about that.

Q. Mr. Hine, in checking over the records of this company and the reports made to the Public Service Commission, did you ascertain how long the properties of this company lasted, some of them?

Mr. Ransom: I object to that as incompetent.

A. Well, you cannot obtain from these records the useful life of the property of this company, that is, the life that it had lived.

Q. But can you generally in other companies?

Mr. Ransom: I object to that as vague. He could not ascertain it, because the properties do not wear out and have not.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Did you ascertain?

Mr. Ransom: I object to that, he says he could not.

The Master: Objection sustained.

Mr. Chambers: Exception.

By the Master:

Q. What was the total depreciation for 1919?

A. Roughly it is \$211,000.

Q. Is that including or excluding Douglaston?

A. It doesn't make any difference.

Q. On the basis of 6½ cents on the average of gas sold by this company in 1919, they would only get \$21,000?

1888 A. Yes, about that.

Q. How is \$21,000 going to take care of \$218,000?

A. You mean they should lay aside in 1919—

Q. I asked you what the amount was for 1919 alone?

A. Oh, the amount accruing then?

Q. Yes.

A. That is shown on this table, Exhibit A-111, as \$20,282, exclusive of the Douglaston Extension, and \$21,225 including the Douglaston Extension, and these are reduced to cents per thousand cubic feet, so of course it would be the same.

Q. Where does the consumer get off on that? What difference does it make to the consumer whether no depreciation is allowed at all, or whether the consumer is charged for depreciation as he gets the gas?

A. Well, it seems to me there has got to be a depreciation fund kept up in order to maintain the investment, both for the protection of the consumer and for the protection of the company.

Q. Yes, but what difference does it make to the consumer whether the rule I adopted in the Consolidated case is taken or not, not to allow depreciation, or the rule that you advocate, charging it to the consumer?

A. I don't know, but I think this way is right, irrespective of how it would figure.

Q. But I want to know what difference in results it would make so far as the consumer is concerned?

A. I don't know what difference it would make.

Q. Would it make any?

A. I don't know. What rate of return do you take?

1889 Q. I don't know.

A. I don't know, either.

Q. Does it depend upon the rate of return?

A. In making a mathematical calculation as to what this would do you would have to take into account the rate of return, but it seems to me that what the consumer has got to do is to pay enough in his rate to take care of the depreciation that accrues, and that the company has got to keep their books so as to set that up, so when the property is retired for any cause whatsoever that fund can be charged with the cost of the property.

Q. Now, in the Consolidated case you made no such statement, did you?

A. No.

Mr. Chambers: I object to that as already covered.

The Master: I am going to have this record so clear that anybody who runs can read it.

Mr. Chambers: That is what I started to do a few minutes ago.

The Master: If Mr. Hine has testified to the facts correctly now, then the Court was being imposed upon in the Consolidated case when the defendants did not suggest the same thing, and I want the Court to know that in the Consolidated case right here on this record. I won't stand for it, it is not justice and it is not right. The testimony offered in the Consolidated case and that I rejected was testimony to the effect that from the cost of the property to the company should be taken the amount for accrued depreciation.

Mr. Ransom: He still says that.

1890 The Master: There was not the slightest suggestion that the consumer should in some way, shape or manner pay for that accrued depreciation. It makes a whole lot of difference.

Mr. Chambers: You wouldn't let me show it.

The Master: Nonsense, there never was a suggestion of that kind. As I bring out from this witness, this whole thing turns upon the rate of return. If in times of high money rates, the rate may be eight per cent, then it makes a little difference. When the rate is as low as six per cent it probably does not make any difference at all. I want this record to show clearly that the defense was not fair with the Court in the Consolidated case.

Mr. Chambers: I except to that.

The Master: That there must be an accrued depreciation deducted without any countercharge against the consumer.

Mr. Chambers: I take an exception.

The Master: Go ahead. This testimony of Mr. Hine simply confirms the conclusion that I reached in the Consolidated case that the accrued depreciation should not be deducted.

Mr. Ransom: It also shows that the allowance in cutting down the renewal and replacement figure was wrong.

The Master: No.

Mr. Chambers: Why didn't you take off what the company itself had set up?

The Master: Well, I made a speech on the record; go ahead.

1891 By Mr. Chambers:

Q. Mr. Hine, in your experience with the Public Service Commission, and in these bond issues, did you have occasion from time to time to check over the reports made by the companies to the commission and did you thereby ascertain from your experience gained in that way the life of the various pieces of property used in the gas making business?

Mr. Ransom: Objected to as incompetent.

The Master: Objection sustained.

Mr. Chambers: Exception.

Mr. Cummings: You have characterized these as arbitrary figures. He wants to show the basis of it.

By Mr. Chambers:

Q. What was the average period of construction you ascertained here in this New York & Queens case?

The Master: From where, from what source?

Mr. Chambers: From an examination of the books.

The Master: Of whose books?

Mr. Chambers: The New York & Queens Gas Company.

The Master: That I will allow.

Mr. Ransom: Construction of what?

The Master: Of any of their property.

Q. First I will ask if he did ascertain?

A. No, I did not from the books, I estimated the average period of construction.

Q. And what estimate did you place?

Mr. Ransom: I object to that as incompetent, immaterial and irrelevant, not pertinent evidence here, and as vague and indefinite; it does not relate to anything. What does he mean?

1892 The average period of the construction of a smoke stack or a generator stock.

The Master: I will sustain the objection on the ground that the question is not definite enough. Particularize what kind of property you mean.

Q. Will you state, Mr. Hine, the average construction period and for what property did you estimate?

Mr. Ransom: Objected to as vague and meaningless and indefinite. The books and vouchers show what the period was, no occasion for estimating.

By the Master:

Q. How did you make any estimate about it, Mr. Hine?

A. The only way you can do that would be by viewing the character of the property and the time that it takes to put in certain kinds of property from the time construction work is started until the units are put in service.

Q. In what year?

A. I have not taken any specific study of any year.

Q. What year did you have in mind as to the rapidity with which work was done?

A. I had no particular year in mind. I had in mind the weighted average for the entire property of the company.

Q. Can you do work as rapidly now as you could five years ago?

A. No. I was not estimating how long it would take to rebuild that property now. What I was estimating was the weighted 1893 construction period for the property as it was built.

The Master: I think I will sustain the objection.

Mr. Chambers: Exception; will your Honor state why you sustain the objection to that?

The Master: Yes; I think the question is entirely too indefinite.

Q. Did the books show, Mr. Hine, the average construction period of this company?

A. No; the books would not show the construction period.

By the Master:

Q. Would not the pay roll accounts and contractors' vouchers show what time it took them to do a piece of work?

A. You will have to determine the time when it was put into service, and I do not know of any record that shows when work was started and when the unit was put in service, taking all the properties of this company. I know that with main extensions, generally speaking, a short piece of main is laid, put in service almost immediately. With meters—

Mr. Ransom: I object to this. He is rambling on about this thing after the objection has been sustained.

A. (continued). They are added to capital account as purchased. With service, generally speaking, they are put in service almost as soon as they are built, and it only takes a day or so to build them. And with plant equipment, items like holders, they would take a considerable period to build, say eight months, and other plant equipment would vary.

1894 By Mr. Chambers:

Q. Are you able to say what would be the weighted average of that construction period for the property described in these various tables?

A. Yes. I have estimated that it would not be in excess of six months.

Mr. Chambers: That is all.

The Master: Do you want to cross examine now?

Mr. Ransom: You see the situation. They have kept these books and tables carefully concealed until this morning. This is the first time any of us have seen any of them and they sprung all of them out of their pockets all of a sudden. I am frank to say that it is the kind of a thing that we are in a position where we have no other alternative—

By Mr. Chambers:

Q Mr. Hine, when were these tables finally completed?

A Yesterday afternoon.

By Mr. Ransom:

Q Were none of them completed until yesterday noon?

A I think probably some of them had been completed; Monday, I believe.

By Mr. Chambers:

Q You mean this week?

A Yes.

By Mr. Ransom:

Q None of them had been typed until Monday?

A I do not believe so.

By Mr. Chambers:

Q I might ask you this. Did you get them ready just as quick as you could, Mr. Hine?

1895 A I did.

Q Did you secrete them in any way?

A I did not.

Q Did you carefully conceal them?

A No, sir.

Mr. Ransom: You did not furnish any of them; that is the only significant fact.

Mr. Chambers: That is my responsibility. We are overcrowded, we are rushed. There is an undue haste to try these rate cases. It is not fair to the consumer nor to counsel representing the consumer the way that you are trying to rush through these cases and get abortive judgments. You have not even made the City of New York a party and they ought to be.

The Master: As I understand it, you are through with Mr. Hine direct examination. His cross examination is suspended until he hear from Judge Ransom.

Mr. Chambers: Mr. Hine is ready to be cross examined.

The Master: Cross examination is suspended.

Mr. Chambers: When will they cross examine?

The Master: When they look at your exhibits.

Mr. Chambers: Suppose they say instead of the Master. Suppose the complainant company tells us with some reasonable degree of definiteness when they will be ready to proceed. Can your Honor get them to do that?

The Master: No.

Mr. Cummings: I guess the time is unlimited.

1896 Mr. Chambers: You mean you are going to allow them to take as long as they want to?

The Master: Yes, if they are in no hurry to finish the case you need not worry about it.

Mr. Ransom: We are in a position where they just compel us to take time and delay justice to this company.

Mr. Chambers: I would like to tell the Court right here that on the 11th inst. we were ready to proceed with the argument in the Consolidated Gas case on your report and counsel for the other side stated in open court that they were not ready, and the company was not ready, and they withdrew their notice.

Mr. Ransom: We are absolutely ready to argue it.

Mr. Chambers: Put that in parallel columns with the statements that were made then.

Mr. Ransom: The statement is an absolute falsehood and the man who made it knows it.

Mr. Chambers: You are a liar; take that stenographer.

Mr. Ransom: You are a liar.

Mr. Chambers: You were told you are a liar in the court room the other day, and it is true. Ransom, you cannot tell the truth.

The Master: I do not want to hear any more about that.

Mr. Chambers: If the Master were not here I would say some more about you.

The Master: Now stop that.

1897 Mr. Chambers: You are a coward besides on top of the rest.

Mr. Ransom: We will deal with that in the proper place.

MILO R. MALTBIE, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

Direct examination.

By Mr. Chambers:

Q. Mr. Maltbie, what is your business?

A. Public utility consultant.

Q. You are a resident of the City of New York?

A. I am.

Q. And were you a member of the Public Service Commission, of the First District, for a time?

A. For nearly eight years.

Q. And you were appointed to that office when the Commission came into existence?

A. 1907, and re-appointed in 1910.

Q. The Public Service Commission of the First District had supervision and control over what public service corporations?

A. Over all gas, electric and street railway companies operating in the City of New York, and in such companies as far as the corporate affairs were concerned if their lines extended outside of the City of New York; had jurisdiction over the railroads operating in the City of New York exclusively and over property of the companies that was in the City of New York although not exclusively operating here.

It also had charge of the preparation of the plans for laying out rapid transit routes, the negotiation of contracts for their 1898 construction and for their operation.

It had jurisdiction over the securities, rates of fare, methods of keeping accounts and books of these companies, and other things set forth in detail in the act.

Q. Now, did the Commission supervise the construction work and control the operation of all the rapid transit subway lines built by the City of New York or under franchise contracts from the City?

A. Yes.

Q. After you were Public Service Commissioner what public office did you hold?

A. The only public office I held after that was for about one year and nine months when I was City Chamberlain of the City of New York.

Q. And while City Chamberlain, about how much money did you handle, or did that office handle annually?

A. About \$800,000,000 to \$1,000,000,000 annually.

Q. Were you the adviser to Mayor Mitchel on gas, electric and telephone rates?

A. I was.

A. Also contracts with conduit companies?

A. Yes.

Q. The New York Central Improvement?

A. Yes.

Q. And various other franchise and utility matters?

A. Yes.

Q. During the war, what were you engaged in?

A. Well, first I was connected with the Ordnance Department in the War Department, and had charge of the negotiations 1899 of contracts for the purchase of toluol, and for the construction of toluol plants connected with artificial gas companies.

I also had charge of the negotiation of the contracts with the gas companies where these plants had been built for the operation of them for a time, and later I was connected with the United States Shipping Board, Emergency Fleet Corporation, in charge of their property bureau, having to do with the purchase and commandeering and appraisal of land for the housing developments built under the Emergency Fleet Corporation, amounting in all to about \$75,000,000.

I had charge of the negotiation of the contracts for the extension of the public utilities in which these various developments, that is

gas, electric lighting, street railways, and in a few instances telephones; I was later adviser to Chairman Hurley of the United States Shipping Board as to power matters and had to do with the negotiation of contracts for the advance of money by the United States Government for the construction of additional power facilities by the power companies, and I was engaged upon this work when the armistice came and shortly after as soon as the work was completed I resigned.

Q. What university are you a graduate of, Mr. Maltbie?

A. I received the Degree of Bachelor of Philosophy from Upper Iowa University; the Degree of Master of Philosophy from Northwestern University, and the Degree of Doctor of Philosophy from Columbia University.

Q. In what year did you graduate from Upper Iowa University?

A. In 1892.

1900 Q. And from Northwestern University?

A. 1893.

Q. And from Columbia University?

A. 1897.

Q. And from 1893 to 1895 what business were you engaged in?

A. I was Professor in a college in Illinois teaching mathematics and economics.

Q. And then did you accept a Fellowship in administrative law in Columbia University?

A. I did.

Q. How long a time did you spend at Columbia?

A. I was there two years.

Q. And what did you specialize in?

A. In administrative law and economics.

Q. During the next eight years after that, what business were you engaged in, what occupation?

A. Well, I made a number of investigations, prepared a number of reports on franchise matters for various organizations, bodies, public officials, the Merchants Association of New York, the New York Reform Club, the Civic Federation of Chicago, the National Civic Federation and a number of others.

Q. Did you lecture upon municipal government at Columbia?

A. I did for a short time.

Q. And were you editor at one time on municipal affairs?

A. Yes.

Q. From 1906 to 1907, what were you engaged in?

A. I had charge of the investigations for the National Civic Federation into the relative merits of municipal and private ownership of public utilities in Great Britain, there being accountants and
1901 engineers under my direction, I think, about twenty-four plants were investigated in an engineering and accounting way and reports prepared. These reports I later analyzed and digested. I also prepared a report upon the franchise conditions and general conditions relating to public utilities, methods of accounting, and things of that sort, and was engaged on this work until the spring or summer of 1907.

Q. From 1907 to 1915, you were a member of the Public Service Commission of this State?

A. Yes.

Q. What did you have special charge of while you were with the Commission; what kind of cases?

A. Nearly all the gas and electric rate cases that came before the Commission were referred to me. Nearly all of the cases involving the issuance of securities by the companies during that period, and certain cases relating to street railway service, particularly as to the lines in Manhattan; matters of accounting under the uniform system of accounts and the preparation of the uniform system of accounts.

I was also chairman of the committee having to pass upon all of the plans for rapid transit work that were prepared by the engineering department before they were finally approved by the Commission, and then I had more or less to do with the negotiation of the contracts for the present rapid transit lines, that is, the lines that are being constructed now under contracts with the two companies.

Q. The total value of the properties appraised by you amounted to about how much, Mr. Maltbie?

1902 A. About a hundred and twenty-five million dollars.

Q. Did you have charge of all gas and electric rate cases before the Commission?

A. Nearly all of them.

Q. Did you have charge of a majority of the cases before the Commission involving the issuance of stock, bonds, and other securities?

A. Yes.

Q. What was the total amount involved in these cases?

A. About six hundred and twenty million dollars.

Q. Did you have supervision of the preparation of the uniform accounting systems for all public utilities under the jurisdiction of the Commission?

A. Yes.

Q. Were you chairman of the committee of the Commission which passed upon the construction plans for all rapid transit work?

A. Yes, I have stated that.

Q. While a member of the Public Service Commission, do you recall the estimated expenditures of the work under contract?

A. Involved in those plans to which I have referred, about \$124,000,000.

Q. And were contracts calling for many additional millions partly completed?

A. Yes.

Q. Now, then, for several months in 1915, did you represent the State Railroad Commission of the United States before the Interstate Commerce Commission?

A. I did.

Q. That was in connection with the valuation of railroads?

1903 A. The valuation of all the railroads of the United States.

Q. And you resigned that office to accept a membership in the Advisory Board, upon the valuation of railroads, of the Interstate Commerce Commission?

A. I left that position to become a member of the Advisory Board of the Interstate Commerce Commission.

The Master: Was that valuation that you made part of the work of which the result was published a week or two ago?

The Witness: Of course, I was just going to say the Advisory Board had to do with the general questions of policy and methods for all of the work on all of the systems, and in only two cases to which I will refer did I have specifically to do with any one property. The methods and principles which were considered by the Advisory Board were of general application, relating to the general methods of conducting valuation work on all of the systems; and the valuations to which you have referred are a result, not of that work, but of all of the work.

Q. What was the work of the Advisory Board?

A. Well, I have just stated it had to do generally with the methods and principles to be followed by the accountants and engineers in all of their valuation work upon all of the lines. The two instances in which I was asked by the Commission to make specific reports were the Norfolk & Southern System and the Winston-Salem South-bound. I prepared in those cases the reports, the accounting reports on those two systems—of course, the accountants doing the 1904 work under my general direction and reporting to me, and the results being taken by me and compiled and analyzed and the reports written.

Q. While you were City Chamberlain, did you negotiate an adjustment of electric lighting rates?

A. I took part in the negotiation for the adjustment of the electric lighting rates.

Q. Were those rates accepted by the company?

A. They were.

Q. Do you remember how much of a saving to the consumers and to the City it amounted to annually?

Mr. Ransom: Objected to as immaterial.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. Did you investigate the electric subways of the City and prepare a report?

A. I did.

Q. As to their cost?

A. As to their cost and as to the financial results under their contracts with the City.

Q. Did you investigate and report upon the plans for the reconstruction of the freight lines of the New York Central?

A. I did.

Q. Did you advise the Mayor on numerous other franchise and utility matters?

A. Yes.

Q. Including the method of leasing of waterfront property?

A. I did.

Q. You said that during the war you negotiated at the request of the Federal Government contracts on behalf of the War Department?

A. Yes. I think I have covered that work, with the exception of a few things which I did for the War Industries Board, 1905 particularly Mr. Baruch, in relation to the efficiency and cost of coke oven plants, and some reports that I made for the Secretary of War directly.

Q. Were you selected at one time as final arbitrator to determine the value of property of an oil corporation taken by the Federal Government?

Mr. Ransom: Objected to as immaterial.

The Master: I will allow it.

Mr. Ransom: Exception.

A. I was.

Q. During the past five years have you advised the Public Service Commission of Pennsylvania in the Philadelphia Electric rate case?

A. Yes. In that case we made an investigation to determine the actual cost of the property, amounting to about \$24,000,000, and I advised the Commission as to the value of the property and the rates to be fixed.

Q. Did you analyze the finances of the Norfolk Gas Company and appraise certain elements entering into the valuation of its property?

A. I did, and testified before the State Corporation Commission of Virginia.

Q. Did you investigate and report upon the street lighting situation in Toledo?

A. I did.

Q. And the reasonable rates therefor?

A. I did.

Q. Did you negotiate a franchise or street lighting contract and a reduction of electric rates for the City of Lexington, Kentucky?

A. I did.

Q. Did you advise the City of Boston in connection with the arbitration to determine reasonable rates for street lighting?
1906 A. I did.

Q. Did you direct the appraisal of gas property and an accounting investigation into the affairs of the Municipal Gas Company of Albany?

A. I did.

Q. Did you direct the appraisal of the gas property and accounting investigation into the affairs of the Utica Gas & Electric Company of Utica, New York?

A. I did, of the gas part of the property of the Gas & Electric Company of Utica.

Q. And did you act as counsel in that case for the City of Utica before the Public Service Commission?

A. I did.

Q. Did you direct engineering and accounting investigation into the affairs of the Consolidated Gas Company?

A. I did.

Q. And did you testify in that case on certain matters?

A. I did.

Q. Were you employed by the City of Minneapolis in 1918 to appraise the property of the Minneapolis Gas Light Company?

A. I was, and to make an accounting investigation of the company, also.

Q. That is, you were to ascertain the used and useful in the production, distribution and sales of gas of that company?

A. That is correct.

Q. In 1920 were you again employed by the City of Minneapolis?

A. I was.

Q. For the purpose of bringing the appraisal investigation down to date?

1907 A. Bringing the appraisal and making an accounting investigation complete up to January 1, 1920.

Q. Did you testify before the court there, the Special Master in that case?

A. I did, for some nine days.

Q. Have you advised cities, Government authorities, associations and private clients in some twenty other cases?

A. I have.

The Master: Now what do you want Mr. Maltbie to testify to here?

Mr. Chambers: Well, organization, legal and general expenses.

Q. Have you made some investigation of the affairs of this complainant company, Mr. Maltbie?

A. I have.

Q. Did you make an investigation as to an allowance to be made for organization, legal and general expenses?

A. Well, I have prepared an amount which I consider the maximum amount should be allowed for organization, legal, general and preliminary expenses, having to do with the formation of the company and the securing of the necessary rights and privileges, on the basis of an estimate up to 1904 and an investigation to determine what, if anything, the Company had actually paid and had charged in its books of account to a fixed capital account for any such items from the middle of 1904 to the end of 1919.

By the Master:

Q. Does this figure that you are now discussing include franchise rights?

1908 A. It includes what might be the legal expenses connected with the securing of the franchises, but nothing for the value of the franchise itself independent of the cost.

Q. Suppose they had to pay somebody who owned the franchise for it, in order to get it?

A. I do not include that.

By Mr. Chambers:

Q. Did you find any charges on the books, Mr. Maltbie, for organization, legal and general expenses, as such?

Mr. Ransom: Objected to. The books speak for themselves.

The Master: I will allow it.

Mr. Ransom: The question of whether the account is in that particular form is not important. He cannot characterize the account.

The Master: I will allow it.

Mr. Ransom: The accounts were prior to the creation of the Public Service Commission. The form in which they were set up was one entirely within the rights of the company. There was no requirement of law that they should be given any particular labels.

The Master: I do not understand the witness limits his answer to particular labels—do I? Is that what you mean, Mr. Maltbie?

Mr. Ransom: He characterizes what the company has.

The Witness: I cannot answer any of those questions yes or no; I can tell you what I did.

By the Master:

Q. What I am getting at is this. Suppose there was an 1909 expense which was a legal expense, but you did not find it in the Legal Expense Account, would it be included in your figures?

A. Since 1904 there are no items charged, and so labeled, to a Fixed Capital Account. If the expenses were incurred, legal expenses, they were charged as an operating expense and the operating expenses so show.

Q. Have you included it in your figures?

A. I have not included anything since August 1, 1904, for any of those items, because I could find none of those items that were incurred by the company that were not charged as an operating expense.

Q. What difference does it make, for the purpose of these figures, whether they were charged in operating expense or not?

A. Well, they cannot have it twice. I assume that counsel for the complainant would grant that they cannot have it twice.

Q. That may be, it is not a question of whether they can get it twice, but the question is the value of this property and its cost, and one of the elements you say is legal, general and organization expense.

A. Yes.

Q. I do not care and I cannot see how the courts can be interested in the question as to where it is charged, if we are trying to determine what the value of the property was and its cost.

A. I am not attempting to give a figure for reproduction cost of the property and, furthermore, your Honor, you have got to take two things: You have got to take the value of the property 1910 and you have got to take the operating expenses. Now, if you say that this company should be allowed in its value certain items representing legal expenses paid to counsel, which during these years prior to 1909 were classified according to the way the company wanted to classify them, since 1909 classified according to the order of the Commission, and in that period classified as

an operating expense, you cannot take operating expenses just as they are.

Q. Why not?

A. Because if you do you put it in capital account once, then you include it as an operating expense, and you have it twice.

Q. Yes, that may be, but we have two different situations—one, we are now trying to find out what the actual cost was to this company.

A. Yes, but these two things have got to be consistent. You cannot put it into capital account and put it into operating expenses, too.

Q. That may be.

A. Nor can you leave it out of capital account and leave it out of operating expenses, too.

The Master: You may proceed, Mr. Chambers.

By Mr. Chambers:

Q. What figure did you estimate for organization, legal and general expenses—what sum?

Mr. Ransom: Objected to as incompetent. This witness, with all his narration of qualifications, has shown no relation to the actual development of any such enterprise. He never started an enterprise of this sort; he never incurred expenses of this kind during the time that the organization and development expenses of this company were incurred; he was not in any way identified with anything in the world of a construction nature or affairs, or with practical activities, but was engaged purely in an academic capacity.

The Master: I will take it.

Mr. Ransom: He never had anything to do with those matters during that period.

The Master: Overruled.

Mr. Ransom: Exception.

A. On the basis of an allowance for organization, legal, general and preliminary expenses prior to August 1, 1904, and on the basis of what the books themselves show for expenses incurred since that time, I have allowed as the maximum amount \$10,000.

By the Master:

Q. That is, your estimate is that \$10,000 will cover it?

A. Would cover these expenses on the property up to 1904, and since then there have been no charges on the books. They have gone into operating expenses, so I add nothing since 1904. It is virtually \$10,000 as the maximum amount for a company with the property that it had up to August 1, 1904, which was around \$300,000.

Q. Is that based upon your understanding of what it actually cost, or your estimate of what it should have cost?

A. No, it is an estimate of an amount on the basis of what it reasonably did cost.

Mr. Ransom: I move to strike out the statement of the witness that \$300,000 was the cost of the property that the company had in August of 1904. It is contrary to the evidence on both sides of the case.

1912 The Master: Yes, I will strike out that statement.

Q. Whatever they had at that time you figured at \$10,000?

A. Yes, and that statement is based upon the figures put in evidence this morning by Mr. Hine, down to 1904.

The Master: Yes. Then I will strike out that testimony.

Mr. Chambers: I object to you striking it out.

The Master: That objection is overruled.

Mr. Chambers: Exception.

By Mr. Chambers:

Q. Mr. Maltbie, did you prepare some figure on working capital for this company?

A. I did.

Q. What do you mean by working capital?

A. Well, I have prepared one figure in this case for working and construction capital in one item, and by that phrase I mean the amount of money or its equivalent in property which the company must provide in advance of the time when it will be reimbursed by the consumers of the gas company, either in the way of payments for gas or in payments for the rental of appliances. I have also included the funds or equivalent in property that would have to be provided by the company for construction work in advance of there being entered in the amount upon which the company is entitled to a fair rate of return. Generally speaking, these relate, of course, to materials and supplies, stoves, appliances in this case, the operating expenses that must be advanced, the operating materials that must be paid for in advance, and the cash that must be on hand to meet the bills as they are presented.

1913 Q. What investigation did you make prior to fixing this amount for working capital and construction capital?

A. I made an investigation or an examination of the exhibits that have been presented as to the operating expenses, the exhibits showing the balance sheets of the company, and the exhibits showing the amount of materials and supplies on hand, all of which were placed in evidence by employees of the Public Service Commission. I read the evidence to some extent, so far as it relates to working capital questions; I had certain investigations made to determine how meters were read and how bills were rendered, the amount of time that elapses before bills are paid. I made an analysis of the accounts receivable to separate the amounts due from consumers for gas from those due from consumers for appliances, the amount sold through prepayment meters and the amount of time that the company is allowed before it is required to pay its bills for supplies and things of that sort.

Q. Are you able to say what would be a fair and reasonable amount for working capital for this company, the complainant company?

The Master: Working capital and construction capital?

Mr. Chambers: Working capital and construction capital.

Mr. Ransom: That is objected to as immaterial.

The Master: Objection overruled.

Mr. Ransom: Exception.

1914 Mr. Chambers: Working and construction capital together.

Mr. Ransom: May I state my objection. I object to it on the ground that the witness has no qualifications to do anything of the sort. The fact that he sat in one or two judicial bodies and several non-judicial bodies and heard other men who presumed they were qualified testify about these things does not make him qualified to testify about them. The man who sits and listens to testimony may acquire a certain familiarity with the subject, but he thereby does not become an expert qualified to testify in a court of law. The judge who tries a negligence case does not become a competent medical witness nor a competent witness as to the producing causes of accidents, or any other matter requiring expert testimony. On that basis the Judge who sits on the bench would become a qualified witness in a patent case. Furthermore, this witness has had no experience himself in running an enterprise, he has no basis for saying what money has to be on hand, what materials and supplies have to be on hand, what must be in the exercise of good business judgment the provision in order to keep the company going and its affairs conducted on a sound economic basis.

The Master: Overruled.

Mr. Ransom: Exception.

A. I would add one thing more to the things that I investigated, and that was that I analyzed the balance sheets of the company to show, by a comparison of current assets with current liabilities, what net amount the company itself had on hand from time to time available for working and construction capital. I have prepared a table showing the amount of working and construction capital as the average for the years from 1904 to 1920 inclusive.

Q. That is designated as Table 40, is it, Mr. Maltbie?

A. It is.

Mr. Chambers: I offer Table No. 40 in evidence.

Mr. Ransom: Objected to on the grounds already indicated, and upon the further ground that we are not concerned in this case with the working capital as of 1904 or 1905 or any of those earlier years. The witness has no qualifications to testify as to those years or as to any years.

By the Master:

Q. What is that, about 20 cents a thousand; \$70,000 for 1920?

A. It will be about 20 cents a thousand in 1920.

Q. There was a little more than that for 1919 due to the Douglaston Extension?

A. Due to the Douglaston Extension very largely.

The Master: I will overrule the objection.
Mr. Ransom: Exception.

Marked Defendants' Exhibit A-112.

By Mr. Chambers:

Q. Mr. Maltbie, you did not base this on cents per thousand cubic feet, did you?

A. No, I worked it out in amounts for each year.

Mr. Ransom: Have you the items that make up that \$70,000?

1916 The Witness: I have my working papers, yes.

The Master: I think when Mr. Chambers gets through with Mr. Maltbie, Judge Ransom, you better go over those working sheets with him.

Q. Interest and taxes during construction, Mr. Maltbie. Are you able to say what would be a fair and reasonable amount to allow this company for that?

A. I have made an estimate of interest and taxes during construction, practically upon the same basis as the estimate for organization, legal, general and preliminary expenses. That is, I have undertaken to estimate the amount which might reasonably have been charged for interest and taxes during construction up to August 1st, 1904, and then have taken the amounts actually shown by the books of the company as charged to a fixed capital account for interest and taxes during construction since 1904. The books do not show the amount allowed for interest and taxes during construction segregated from any other items prior to 1904, just as they do not show the amounts separate allowed for organization, legal and general expenses prior to 1904.

By the Master:

Q. Coming back for a minute to this working capital, was there not an actual working capital of the company of more than \$70,000?

A. Well, \$70,000 is for 1920. Not for the periods which I have examined. I did not go through all of them, because I do not believe in estimating working capital that way; because—

Q. Well, you include receivables, do you not? You include the inventory on hand, do you not?

1917 A. I take materials and supplies on hand, yes.

Q. My recollection is that that aggregated \$140,000 odd?

A. Yes, but you have to take off—Well, I would not confirm the \$140,000, because I do not recall the figures; but you have to take off from that the accounts payable and the current liabilities. It is unfair to take the current assets and not—

Q. If I do not take off the current assets and current liabilities, then the figure is low; then I have to increase it to this \$140,000?

A. If you do take it off?

Q. No, if I do not, if I do not agree with you about taking it off?

A. Well, your Honor, I do not know of any way of putting working capital in that will stand the test of the decisions in the courts, to take off the current assets and not take off the current liabilities, because here are the decisions——

Q. I am not concerned with decisions now, but one practical proposition.

A. Let us take it on the ground of reasonableness, then.

Q. Yes.

A. You buy a barge of oil, we will say, it costs you \$10,000. When it comes over there it goes into your materials and supplies account at \$10,000, does it not?

Q. That is correct.

A. And it appears in your assets under materials and supplies \$10,000. Now, you have not paid for that, you have 30 days to pay for it. You have not spent a cent, and the only thing you have got is what? You have on one side of your materials and supplies account an asset of \$10,000, you have a liability on the other side to the oil company for \$10,000, to accounts payable, haven't you?

Q. Right.

A. You have not provided any working capital, though.

Q. Yes, but you ought to have working capital with which to pay that bill; isn't that so?

A. You do not need to have it until 30 days are up.

Q. But you have to figure on having it sooner or later?

A. Sure. You have to have it in 30 days.

Mr. Ransom: And that is a continuing matter.

The Witness: Yes, but there is 30 days. If you bought all your materials and supplies as this company does, if you bought all materials and supplies on 30 days' time, you do not need to provide any working capital for that for the 30 days. If you take an extreme case, just for an illustration, suppose a man was running a store and he bought all of his supplies on 90 days' time, to take an extreme case—he did not have to pay a cent for his materials and supplies before 90 days. Suppose he sells for cash day by day and he has such a business that he can turn over his entire product in 60 days. That man does not have to provide a cent of working capital, because before the 90 days are up he has all his money in again. So that the time on which the materials and supplies are purchased has a material and very important effect upon the amount of working capital to be provided and, consequently, if you do not consider the accounts payable and the bills payable on the other side, you are neglecting that entire question of whether it is bought on cash, on delivery, or whether it is bought on 30, 60 or 90 days' time.

The in one reason why I do not—while I always look at those items to see what the balance sheets show, I do not consider it is the infallible way of doing it. Furthermore, if you subtract your accounts payable and your bills payable, they may represent capital expenditures and have nothing to do with working capital. So that it would be unfair to deduct them in case they do. On the other hand, your assets as represented by cash may be cash ac-

accumulated to pay interest on dividends when they accrue—to pay interest on bonds when interest accrues, or to pay dividends. Well, you do not have to provide working capital to pay the dividends, nor dividends to pay the interest holders their interest. That is not supposed to be paid until it is earned and paid in.

The Master: In the Consolidated case I allowed 20 cents, did I not?

Mr. Ransom: Yes.

Mr. Cummings: Mr. Little's testimony.

By the Master:

Q. That was more than you testified to in this case?

A. Yes.

Q. In this case your figure happens to be about 20 cents?

A. No, it does not happen to be 20 cents. The Consolidated case was an entirely different case.

1920 Q. What do you mean it does not have to be 20 cents in this case?

A. Well, I object to the term "happens to be."

Q. What I mean is your figure does represent, as it happens, based upon the quantity sold, 20 cents?

A. It works out about 20 cents. I would rather use the words "works out," rather than "happens to be." It works out at about 20 cents a thousand. But the two cases are entirely different.

Q. You think this company is entitled to more than the other one, the Consolidated?

A. I do. More in cents per thousand cubic feet of gas sold, if you are going to use that as the basis.

Q. How much more?

A. Well, I have forgotten what my figure works out in the Consolidated case, but the amounts I believe to be correct, and I have not changed my opinion, even though the Master did not accept the figures.

The Master: Proceed.

By Mr. Chambers:

Q. You do not work out your figures for working capital on cents per thousand?

The Master: He has already explained all that, Mr. Chambers. Go on to something else.

Mr. Chambers: The question up was that I offered this in evidence.

The Master: The objections are overruled. I understand Mr. Ransom objected to it.

Mr. Ransom: Why, that was offered quite a while ago and marked.

1921 The Master: You pressed an objection and I overruled it.

Mr. Chambers: Oh, I was on interest and taxes during construction, that was it.

The Master: Yes.

Q. With reference to interest and taxes during construction, Mr. Maltbie, will you please give what is a fair and reasonable amount to be allowed for interest and taxes during construction?

The Master: In your opinion.

Mr. Chambers: In your opinion.

Mr. Ransom: Objected to on the grounds previously indicated, the entire lack of qualifications of this witness to express an opinion. Taxes are not a matter of opinion, taxes are a matter of fact.

The Master: Overruled.

Mr. Ransom: Exception.

A. On the basis which I have stated and on the basis of the amount of fixed capital as shown in the exhibits placed in evidence through Mr. Hine this morning—that is, the amount of fixed capital in 1904—also upon the basis of the cost of land, as shown by the company's exhibits, I have estimated an amount up to 1904 of \$5,000. There were no charges for interest and taxes during construction, as shown by the books of the company, from 1904 to near the end of 1915. Near the end of 1915 there is an item, as shown by an exhibit placed in evidence this morning, Defendants' Exhibit A-93, of \$402.97. I have rounded it off and called it \$500, and estimate for the period from 1915 to 1918 \$5,500. In 1919 the books of the company show a charge of \$1,152.32, as indicated by Complainant's Exhibit A-93, for interest on money borrowed from the Consolidated Gas Company, and that shows the 1922 dates when it was paid. Rounding off the amounts I get as an average amount for 1919 \$6,000, and as of December 31st, 1919, \$6,700.

Q. Should there be any allowance for omissions and contingencies, Mr. Maltbie?

Mr. Ransom: Objected to.

The Master: What is that? What do you mean should there be?

Mr. Chambers: Should there be any allowance made in this case.

The Master: Objection sustained. I do not want Mr. Maltbie to come here and say they should or should not allow anything; I will take his opinion on it.

Q. Did you make allowance for omissions and contingencies?

The Master: Objection sustained.

Q. In your opinion should there be any sum allowed in the rate base for omissions and contingencies?

Mr. Ransom: Same objection.

The Master: Is there any claim for omissions and contingencies?

Mr. Ransom: There is for the reproduction of the property, of course. In reproducing the property, of course, there is an item of omissions and contingencies.

The Master: Simply on a reproduction basis?

Mr. Ransom: On a production basis.

The Master: I will take his answer.

Mr. Cummings: It is in Colonel Miller's table.

The Master: That is on a reproduction cost basis. That is not what Mr. Maltbie has testified to. Go ahead, I will take his 1923 answer.

Mr. Ransom: Exception.

The Master: No, I think I will sustain his objection unless you say in arriving at a reproduction cost whether there should be any allowance for omissions and contingencies. I will sustain the objection, Mr. Chambers, unless you frame your question to meet the testimony of Mr. Miller on reproduction cost.

Q. Are the omissions and contingencies reflected in the cost which Mr. Hine used in his figures?

Mr. Ransom: Objected to as incompetent.

The Master: Objection sustained.

Mr. Ransom: The witness certainly cannot testify to that.

Mr. Cummings: Here it is (handing Master book).

Mr. Ransom: That is reproduction as of 1904, yes.

The Master: Reproduction as of 1904. Mr. Miller's testimony was entirely upon the question of reproduction. On that particular item of reproduction you show me, Mr. Cummings, Mr. Miller's testimony was not entirely satisfactory anyhow, but I am going to limit Mr. Maltbie's testimony to the matter of reproduction cost.

Mr. Cummings: I am glad to hear that.

Q. Basing the rate base on cost, Mr. Maltbie, should anything be allowed for omissions and contingencies in this case?

Mr. Ransom: Objected to.

The Master: Objection sustained. I will not let you ask it unless you meet Mr. Miller's testimony on reproduction cost.

1924 Mr. Miller's testimony, to which Mr. Cummings has directed my attention, was the reproduction cost as——

Mr. Ransom: He estimated at that time the property had cost and would cost to reproduce——

The Master: At that time.

Mr. Ransom: Yes, had cost and would cost to reproduce at that time so much money.

The Master: Yes. Do you get the point, Mr. Maltbie?

The Witness: Yes.

The Master: I will let you ask that question—in arriving at a figure for reproducing the property new in 1904, or any other time, would you allow, or should there be in your opinion included, an item for omissions and contingencies?

Mr. Chambers: I do not want to ask that.

The Master: I will ask it.

Mr. Chambers: I object to it.

The Master: Overruled.

Mr. Chambers: Exception.

The Witness: Well, in order to answer that question I should have to have more facts than I have.

The Master: I would like to see Mr. Miller's statement there (taking paper).

The Witness: Whether there is anything to be allowed for omissions depends on the carefulness with which the inventory has been prepared.

The Master: Precisely.

1925 Mr. Ransom: There are certain kinds that have not anything to do with the inventory.

By the Master:

Q. Colonel Miller in his Exhibit 96 placed a figure of \$320,350 as one of a series of figures for reproducing the property—in 1904, and in that figure to which I have referred he included a number of things. Preliminary organization and development expense, you say there should be some allowance for that?

A. Yes.

Q. Cost of financing the enterprise?

A. I am coming to that later.

Q. Interest and taxes, you say there should be an allowance for that?

A. Yes.

Q. Administration, legal and miscellaneous general expenses prior to operation. I gather you allow something for that?

A. Yes.

Q. Engineering, superintendence and general contractors' expense and profit?

A. Mr. Hine has covered engineering and superintendence.

Q. Well, I gather you agree that something ought to be allowed for that?

A. For engineering and superintendence, yes.

Q. Coordination of service and consolidation of companies. You are probably going to talk about that and I will pass it. Now we come to the item which he includes in this estimates of the original cost of the properties, what it would cost to produce the property: "Omissions and contingencies. Items not set forth in the accounts or included in the above indicated sum." I will permit you
1926 to answer whether if you were making up a statement of this kind you would include omissions and contingencies?

Mr. Ransom: If your Honor will look at the two classes of omissions and contingencies which there are.

The Master: On page 3.

Mr. Ransom: It is not in evidence, it is in the new one.

The Master: Oh, in his other exhibit, which was Exhibit 66, he says:

"(1) There is always a portion or percentage of the small units or items of machinery, tools, implements and other property which are invariably overlooked in the inventory, and reproduction has to be provided for, nevertheless, in any present estimate.

"(2) Small units of materials, mechanisms and supplies are lost or destroyed during construction. As to many items of materials and supplies, a larger quantity has to be delivered and paid for than could ever be checked up now in the completed structure and equipment."

Q. Would you include omissions and contingencies under any of those theories or items?

A. Not in cost, because the cost is shown by the books. You have everything in it.

Q. No, but in estimating reproduction cost?

A. In estimating reproduction cost it would depend upon the care with which the inventory had been made. In some inventories I should make a deduction for duplications rather than an addition for omissions.

Q. And in some other instances, it might be proper to allow for omissions and contingencies?

1927 A. Well, in some other cases, your Honor, some allowance might properly be made for omissions. Now, contingency item is usually covered in the unit prices which are allowed and not as a separate item, and it would depend upon the character of the work.

The Master: Well, we have had enough of that. Take the next one.

Mr. Cummings: I think it ought to be noted on the record, your Honor, that Mr. Miller's exhibit there is incorrectly labeled. It says "Cost," and it is not actual cost. It leads one to believe that it is actual cost.

The Master: That was brought out in his testimony, Mr. Cummings.

Mr. Cummings: Do you think it was?

The Master: I think I have made it clear on the record.

Mr. Ransom: As of 1904 it was not claimed to be anything else except an estimate of what it had cost up to that time?

Mr. Neumann: But that was not the way you introduced it. You led everybody to believe it was actual cost.

Mr. Cummings: Yes, actual cost.

The Master: Next question.

By Mr. Chambers:

Q. Going value, Mr. Maltbie, should there be any allowance in this case, in your opinion, for going value?

The Master: I will not take it that way, whether there should or should not be any in this case. What I want to know and what I will permit you to ask Mr. Maltbie is whether in arriving at
1928 the value of a going plant like this complainant company's, there is any element of value which should be included, representing going value, in the sense that there is expenditure to get it going right

Mr. Chambers: I do not know whether the witness can answer that question.

The Master: That is the one I will let you ask. I will put it myself.

Q. Can you answer that, Mr. Maltbie?

A. I can answer that question.

Mr. Ransom: I do not believe the witness is qualified to answer that question.

The Master: I will overrule the objection on that ground.

Mr. Ransom: Exception.

The Master: Mr. Miller has testified at length that in a company of this kind it cost money to put it on its feet, to get it going.

Mr. Ransom: That it did cost.

The Master: Yes.

Mr. Ransom: And this witness does not know, because he never had anything to do with getting a company or anything else going.

The Master: I will let him testify to that.

Mr. Neumann: But Mr. Miller did not know what this particular company paid.

The Master: I might very well rule all this out, on the grounds I indicated before, that what this company paid for the property when it got it probably included the item of going value; but I am going to let Mr. Maltbie state if he can what in his opinion a company of this kind includes for going value.

The Witness: Well, there are two lines or two methods, two general methods, of determining general value.

1929 The Master: You mean by the courts or by persons familiar with this kind of business?

The Witness: Both.

The Master: Well, I do not want what the courts do now.

Mr. Cummings: Because it has been confirmed by the court.

The Master: I do not want Mr. Maltbie to give me any legal opinion.

Mr. Cummings: No, he is not.

The Master: I have ruled against Mr. Ransom, that he can give me a layman's opinion, a practical opinion, and that is what I am willing to take.

The Witness: Well, as I say, there are two methods, two general methods, and a lot of subdivisions under each one, for determining going value. One is the accumulation of deficits below a fair rate of return, offset by excesses above a fair rate of return in later years. I have made no analysis of the history of the company, the financial history of the company, to determine whether under that rule there is such a thing as going value—that is, going value as defined by the Court of Appeals in this State.

Mr. Ransom: I move to strike that out.

The Master: I grant that motion to strike it out.

Mr. Chambers: I object to that being stricken out.

By the Master:

Q. I want to know whether a business man valuing a gas property includes any element for going value. I am not interested just now in what your understanding is of the Court of Appeals' opinion, Mr. Maltbie; I am trying to get your opinion as an expert familiar with gas properties and their value?

A. This is a question of equitable rate. This is not a question of what you would pay to buy the property. That all depends on how you think you would be able to manipulate the public.

Q. No.

A. This is a question of an equitable consideration.

Q. No, I will not take that. I want to know whether you have reached any conclusion, generally speaking, of the value of this property as it stands. Have you?

A. For rate making purposes.

Q. No.

A. You have got to determine the purpose.

Mr. Cummings: Yes, it is entirely different.

The Witness: You cannot fix a value without including or knowing the purpose for which you are fixing it.

Q. This is a gas company, is it not?

A. It is.

Q. And it makes gas?

A. It does.

Q. It also has a manufacturing plant?

A. Yes.

Q. Has mains and services?

A. Yes.

Q. And all the things that go to make up an operating gas plant—a distribution system. Its business is to manufacture and sell gas to consumers, isn't it?

A. Yes.

1931 Q. Have you considered at all the value of that plant as it stands?

A. For what purpose?

Q. For the purpose of making and distributing gas?

A. That is not the question.

Q. That is my question.

A. I cannot give you an opinion on the value of property without knowing the purpose for which the value is to be fixed.

Q. What do you mean? What other values might there be?

A. There is the tax value for one thing.

Q. Do you think the tax value is different from the value for rate making purposes?

A. It may be.

Q. In what respect?

A. Because the tax value has to be fixed under the laws of the State.

Q. Generally speaking, does not the law require it to be taxed at the fair value?

A. It requires certain of the property to be taxed at fair value.

Q. Which part of it?

A. The land.

Q. How about the buildings?

A. I am not familiar with the requirements as to buildings; I think that refers to real estate, however.

Q. What other kinds of value are there?

A. Value for purchase and sale, value for condemnation——

Q. So, you rather agree with what I said in the Consolidated gas?

A. I agree with some things you said in the Consolidated case.

1932 Q. In this respect?

A. Yes, I think the value for——

Q. All right. Now, we will take the value to the consumer, if I can draw that distinction rather than the one you make, value for rate making purposes. You apparently agree with me that there is a value peculiar to the fact that it has a value to the consumer who gets the gas?

A. No, that is a new idea to me; I don't comprehend that yet.

Q. You don't get that yet?

A. I don't get that yet.

Mr. Deegan: That is unheard of.

Q. I don't quite understand where you draw the line about a value for rate making purposes. What kind of a value is that, how do you fix that value?

A. That is a value which is to be determined largely upon equitable ground, practically wholly upon equitable ground, and under the decisions that have been laid down by the courts, there isn't any question about that.

Q. Do the courts do more than say the fair value of the property at the time the rate is fixed?

A. No, but they do not always tell you exactly how to get at it, as to the details.

Q. But generally the rule as you understand it is that the rate must be based upon the fair value of the property at the time of the fixing of the rate?

A. Yes.

Q. Do you know what the fair value of this property is now, assuming that this is the time we are to fix the rate?

1933 A. Not for the entire property, I have undertaken only to handle certain parts of it.

Q. In arriving at your figure would you, as an expert appraiser of gas properties for that purpose, include any value for going value, any amount for going value?

A. I cannot answer the question as to the deficit method, but excluding that method, and taking into account the property as a going concern and on the basis which Mr. Hine has appraised the property on, the property as a continuing concern, and the basis of an allowance for working capital, for preliminary and development expense, interest and taxes during construction, I do not believe any further sum should be added for going value, in this case particu-

larly, in view of the fact that certain expenditures which are of the nature of canvassing and soliciting and advertising, and things of that sort, to get business and to keep it, are charged as an operating expense, and have been charged as an operating expense not only since the Public Service Commission established the system of accounts, but before that time. If you are going to take the operating expense as a basis for fixing the rate, or determining the question which is before you, there ought not to be anything added in the value of the property for those expenditures, or for the value created by those expenditures which you have once allowed in the operating expense.

Mr. Ransom: He still has not answered your question. In reproducing the property as of 1914, or any other date——

The Master: I think Judge Ransom is right about that.
1934 Eliminate from your mind, for the minute, Mr. Maltbie, how these books were kept, if you were asked to give your opinion what a plant like this could be reproduced for today, doing the business which it does today, wouldn't you necessarily have to include something for going value on either theory?

Mr. Chambers: I object to that.

The Master: Objection overruled.

Mr. Chambers: Exception.

The Witness: You have got to allow something for the expenses of that kind, getting the business and keeping the business, not only getting the business but keeping the business.

Q. On either one of those theories or methods of calculation?

A. You have to allow for it either in operating expense or in the value of the property. I believe personally that those expenses ought to be put in operating expense, and ought to be allowed for there, because if you were to attempt to determine in the case of any expenditure whether it was really a capital expenditure or an operating expense, that is, if you had a bill for advertising, for instance, or if you had a canvasser out, and you wanted to determine how that expense should be charged, how much of it should go to capital and how much of it should go to operating expense, you would have such a difficult problem of practical solution that everybody as a matter of fact puts it in the operating expense. There is where it goes, there is where it belongs.

Mr. Ransom: After the preliminary period is over?

1935 The Witness: No, during the entire period.

Q. If it is not put into operating expense it should be added to the capital account?

A. If it is not in one place it should be in the other. I am firmly of the opinion that it should go in operating expense, and by putting it there you are fair to the company.

The Master: Next question.

By Mr. Chambers:

Q. Now, cost of financing?

A. Cost of financing is an item to be taken care of in the rate of return, and should not be added to the value of the property.

The Master: But if it is not included in the rate of return, it costs money to finance the company at the outset, doesn't it?

The Witness: It always costs something to finance a company.

The Master: You say that the consumer ought to pay for it somewhere, somehow?

The Witness: Yes.

The Master: And if it is not included in the rate of return it must be included in the value of the property?

The Witness: Or as an operating expense.

The Master: Next question.

Q. Depreciation. Mr. Maltbie, what is meant by accrued depreciation?

A. I understand depreciation to be the loss in worth or value due to all causes, such as wear and tear, decay, inadequacy, obsolescence. Accrued depreciation is the total amount of that loss in worth or value up to a definite date. Annual depreciation is the amount of loss in worth or value which accumulates in that one year.

1936 Q. What do you understand to be meant by "deferred maintenance?"

A. Deferred maintenance consists of the expenditures necessary to maintain the property in first class operating condition, but the actual outlay of which has been deferred beyond the reasonable time for making it.

Q. Is depreciation limited to deferred maintenance?

A. In my opinion it is not.

Q. In determining the fair value for rate making purposes, should accrued depreciation be deducted from cost new, whether actual cost or reproduction cost is used, in your opinion?

Mr. Ransom: I object to that as unfair, and not within the province of the witness.

The Master: Objection sustained. I will allow the witness to state whether in arriving at a fair value of the property of the complainant company at this time there should be a deduction, in his opinion, for depreciation.

Mr. Chambers: Exception.

Mr. Ransom: I object to that question, and take an exception.

A. In my opinion there should be.

The Master: A deduction from what?

The Witness: On whatever basis you use. If it is a cost basis a deduction from cost; if it is a reproduction basis, then a deduction from reproduction. Depreciation is a fact, it does not depend on what you paid for the property.

The Master: Suppose the Court, in the person of the Master, is

able to determine the fair value of the property irrespective of depreciation, its present condition, you would not deduct depreciation also, would you?

The Witness: I don't believe he can do it, with all due respect.

The Master: I want to make it perfectly clear that if I can find that this property which Mr. Hine has testified, is in good condition, that it produces a certain amount of gas, and has a certain amount of mains, and from other proof in the case, I can find that the fair value of that property is \$4.00 or \$5.00 or \$6.00 per thousand cubic feet of gas sold, I don't take depreciation, do I?

The Witness: I think you do. The value of a thing, whether it is a gas plant or any other item of property, unless you are talking about a painting on the wall, or at the present time, unless you are talking about a bottle of whiskey, everything that we are practically dealing with these days, has a value dependent upon the amount of service which there is in it to render, and its value decreases as the amount of remaining service that it can render decreases.

The Master: But if the consumer gets a thousand cubic feet of gas, there was certainly used in the making and distribution of that thousand cubic feet of gas a certain amount of plant and distribution system, wasn't there?

The Witness: Yes.

The Master: And that plant and distribution system irrespective of its condition, is worth X cents or dollars to the consumer, isn't it?

1938 The Witness: I don't know how you can determine X cents or dollars to the consumer in that way.

The Master: Go ahead.

Q. Is such deduction, speaking of deduction for accrued depreciation, to be limited in your opinion to deferred maintenance?

Mr. Ransom: I object to that as not within the province of the witness.

The Master: He has already answered that, he said no.

Mr. Chambers: Not in just that way.

A. No.

Q. In determining the amount to be deducted for depreciation what factors should be included in your opinion?

Mr. Ransom: I object to that as not within the province of this witness, and not within his qualifications.

The Master: Objection overruled.

Mr. Ransom: Exception.

A. All the factors that I have mentioned, that is, wear and tear, decay, obsolescence, inadequacy, and any other special factor which may happen to exist because of the special circumstances of the case.

By the Master:

Q. What do you understand by a gas plant being in good condition, and having been well maintained?

A. A property which was properly designed, properly built, and has been maintained up to good first-class operating condition.

Q. So that its usefulness has not been impaired?

1939 A. So that its present usefulness has not been impaired.

Of course you understand that with many kinds of apparatus it is impracticable to keep it up to that efficiency that it had shortly after it was installed, when it got to working properly; but I am talking now about first-class operating condition, when it is kept as near to that point as maintenance and repairs can practically do it.

Mr. Ransom: I move to strike out the answer of the witness. The Witness has no knowledge of the efficiency of gas apparatus, or of any such matters.

The Master: Motion denied.

Mr. Ransom: Exception.

Q. Wouldn't you say, Mr. Maltbie that the substitution of a newer piece of apparatus may tend to increase the efficiency of the plant over what it was planned or designed for originally?

A. You mean a new one of the same kind?

Q. Or, perhaps, a little improved type of some part, or something of that sort?

A. Of course the substitution of improved apparatus is going all the time, and the substitution of an improved piece of apparatus would tend to increase the efficiency of the plant.

Q. Based on your experience, such as you have had, and as to which you have testified, taking a gas plant, generally speaking, when a part is worn out they will substitute the best part they can find for it, wouldn't they, ordinarily?

A. Ordinarily. Of course there are exceptions, but ordinarily they would.

Q. Your experience has been that in a plant like this, where it has been kept in good condition, they will get the best part
1940 they can, the best part that is sold at that time? They will not take an old thing if they can get a better one?

A. Usually, no.

Q. Am I not right in drawing the inference that a plant like this plant, on which a great deal of money was spent in 1915 and 1916, and which the witness Hine has testified was kept in good operating condition, is practically as good as it was some years ago?

A. Its momentary usefulness may be as great as it was a number of years ago, in fact, it may be turning out for the moment a larger amount of gas per unit of labor and materials put into it than it was during years ago; but that in my opinion does not determine the question, or does not say that the value of that plant is either its cost new or its reproduction new.

Q. But for the minute, taking this case that you have just discussed, this plant that is doing as good or better work than it did ten years ago, is worth just as much to the consumer, isn't it?

A. Yes, this pair of shoes that I am wearing are giving me better service than when I bought them, because they are adjusted to my feet, but I would not give now the new value of those shoes.

Q. You have to fix a rate as of this time. Now, as of this minute, the consumer is getting this value from this plant?

A. Yes.

Recess until 2 P. M.

1941

Afternoon Session.

MILO R. MALTBY resumed:

By Mr. Chambers:

Q. Mr. Maltby, you are familiar, are you, with the term "Observed Depreciation?"

A. I am.

Q. What is meant by "Observed Depreciation?"

A. It usually means the almost equivalent of deferred maintenance, or what would be necessary to make the plant as good as new, or as nearly as good as new as it can be made by the expenditure of certain moneys.

Q. Should the amount of depreciation be limited, in your opinion, or the amount of depreciation which is to be deducted, should it be limited to observed depreciation?

Mr. Ransom: Objected to on the grounds indicated this morning.

The Master: Objection overruled.

Mr. Ransom: Exception.

A. It should not.

Q. In your opinion, Mr. Maltby, is there no depreciation where the property is being maintained at 100 per cent efficiency, or is rendering efficient service?

Mr. Ransom: That is objected to as incompetent, and a question of law which the witness is not qualified to pass upon.

The Master: Objection overruled.

Mr. Ransom: Exception.

A. In my opinion there is depreciation notwithstanding the fact that it can be maintained at 100 per cent efficiency or as near to first class operating condition as it is practical to maintain.

1942 Q. In your opinion is each unit of the property of a gas company decreasing in value from year to year?

Mr. Ransom: That is objected to.

The Master: What do you mean by "Each unit?"

Mr. Chambers: Say a generator set, holders.

Mr. Ransom: That is objected to; what kind of value?

Mr. Chambers: Every individual thing.

Mr. Ransom: There is this artful play on value all the while. They first use it to mean one thing and then another.

(Question repeated.)

The Master: Decreasing in what kind of value.

Mr. Chambers: In its useful value, fair value.

The Master: For rate making purposes?

Mr. Chambers: Yes.

The Master: Objection overruled.

Mr. Ransom: Exception.

A. With the possible exception of land each item of property is decreasing in value.

By the Master.

Q. No matter how much it would cost to reproduce it?

A. No matter how much it would cost to reproduce it.

Q. No matter if the market price of material and labor were such that to reproduce it new, and to charge off depreciation from that reproduction cost on any theory that you have suggested, you still say it had depreciated in value?

1943 A. I should say that there was a depreciation in value.

Q. I cannot understand that, Mr. Meltbie. If you take a plant that costs \$100,000 to build ten years ago, you state that that depreciated in value down to this time, and you say that in spite of the fact that it might cost \$200,000 to rebuild that plant today, and if you charged off 50 per cent for depreciation, assuming that is all you would charge off, that you would go back to the original \$100,000, you would still say it depreciated in value?

A. I do.

Q. Well, explain that. How can a thing be worth less than \$100,000 if you admit it is worth \$100,000?

A. You start out with the implied assumption that reproduction cost at present day prices is the measure of value for rate making purposes, which I do not believe is a measure of value.

Q. I am not asking for your opinion on a question of law. I am asking about the value of a building, or machinery—I have assumed that ten years ago it cost and was worth \$100,000, that it has depreciated as much as 50 per cent in ten years, and that to reproduce that today, charging off from the reproduction cost the 50 per cent that I have assumed, it would still bring you back to \$100,000, why is it not worth \$100,000 for rate making or any other purposes?

A. Because I do not believe that reproduction cost at the present time, reproduction cost less depreciation on that basis, is a proper measure of value.

Q. But assume now that you are wrong about your law and we are talking now only about value, would you still say that
1944 the property that I have described and to which I have referred is not worth as much as it was when it was built?

A. Of course, if you make that assumption that I am wrong as to the proper standard, and that reproduction cost is a proper measure—

Q. Yes?

A. Then of course it would be reproduction cost less depreciation.

Q. And if that result was as much or more than the original cost, there has been no depreciation, has there?

A. No, I would not say that. I would then say that the original cost has nothing to do with the value of the property.

Q. Why am I not right in my statement that there is no depreciated value?

A. Because depreciation, and decrease in value, is a fact, and whether you take original cost as the starting point, or whether you take reproduction cost as the starting point, there is that decrease.

Q. Let us look at it again. In 1910 I put up manufacturing building at a cost of \$100,000. I will include machinery in order to bring it down to say a fair average of five per cent on the whole building and machinery. Now, in 1911 the cost of reproducing such a building and such machinery has gone up ten per cent. Would you say that that building and machinery was worth less in 1911 than it was in 1910?

A. If you are taking reproduction cost as the basis——

Q. Yes.

A. I should say that that is worth more, if I understand your figures, because your price has gone up ten per cent and your 1945 depreciation is five per cent, so it would leave an increase of five per cent.

Q. Then there would not be any depreciation in the value of that building?

A. Yes, there would be depreciation, but it would be depreciation off reproduction cost.

Q. No, but the building would be worth, the building and its contents would be worth as much in 1911 as in 1910, in fact a little more?

A. Yes.

Q. Then it has not depreciated in value in that sense?

A. I should say that it was depreciated in value but it has not been enough to offset the increase in labor and material, so that the net result is that the value, if you take reproduction cost is five per cent more than the actual cost.

Q. The net result is that the property is worth more than it was the year before?

A. I would not put it that way, but I should say, the net value of the property is five per cent more than the cost.

The Master: All right, go ahead.

By Mr. Chambers:

Q. Assuming that each of the units of a property is decreasing in value can the whole property have a value equal to its cost new in your opinion?

Mr. Ransom: I object to that.

The Master: Objection sustained; it is argumentative.

Mr. Chambers: Exception.

Q. Assuming for the moment that there is no accrued depreciation, should the company be allowed a return upon the 1946 property constructed out of the depreciation reserves?

Mr. Ransom: I object to that.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. To what item should depreciation be applied, in your opinion?

Mr. Ransom: I object to that.

The Master: Objection sustained.

Mr. Chambers: Exception; you allowed that in the Consolidated

se.
The Master: I would have allowed it here if you had not already
vered it. Mr. Maltbie has fully explained it.

Q. Does the labor cost of property depreciate?

Mr. Ransom: I object to that.

The Master: Objection sustained on the ground that it is fully
vered.

Mr. Chambers: Exception; that is all.

The Master: You want to reserve cross examination?

Mr. Ransom: I am afraid I will have to.

The Master: All right.

Mr. Ransom: When can we get at those papers?

The Master: How are you fixed this afternoon?

The Witness: I made that engagement for three o'clock.

The Master: Will you be through by four?

The Witness: I would rather do it before; I do not know how
g this conference will take.

The Master: Who are you going to have go over it with him?

Mr. Ransom: Mr. Teele.

The Master: Can't you do it right away?

Mr. Ransom: Go right down to your office?

The Witness: Yes.

The Master: Anything else; is that all the proof you have this
ernoon?

Mr. Chambers: That is all I am going to have today or any time
t I know of.

The Master: That is what I want to get at.

Mr. Chambers: I want to see about that first; there may be some
re documentary evidence.

The Master: I think perhaps you better make it until after he
e through with that appointment; arrange that with Mr. Maltbie.

Mr. Ransom: Four o'clock?

The Witness: I do not think I will be through. I think we will
ably be the rest of the afternoon.

The Master: Then do it this evening.

The Witness: I will take it up the first thing in the morning.

The Master: I wish you would do it this evening for my personal
venience. My time is getting very short and this is practically
last week I have got.

The Witness: I am in town yet.

The Master: I will be in town probably until the early part of
r, but I am officially on my vacation then. Why not have Mr.

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Teele go right down with Mr. Maltbie and do what he can until three o'clock.

In order that there may be no misunderstanding on this 1948 record, my recollection is that you have not challenged the books, except under your general challenge that they were not properly proven; is that true?

Mr. Chambers: Let us hear what Mr. Neumann has to say about the proof.

Mr. Neumann: We say that the books for the year 1919 show abnormality in many respects over other years. We have submitted tables to you showing that, showing accounts that usually ran along uniformly for years at a certain figure, have suddenly increased in the year 1912 to three or four times that figure with no reasonable explanation of it by the complainant.

Now, in addition to that, take for instance the year 1919, we contend that they have charged up in that particular year the entire rate-making expenditures in this case, \$15,000.

Mr. Ransom: We have not started on that.

The Master: You have not challenged the amount of fuel used per thousand cubic feet.

Mr. Neumann: We have challenged the amount of fuel and all that by their statistical records which contradict the witness Woods and the witness Spear in the figures that they gave. For instance, the witness Woods gave 37 pounds of generator coal; in the Consolidated he testified to 32½, and the operating figures for this company of that year show 34, and in other years contrasted with it it shows less.

The Master: I understand that. What I am getting at is this; take for instance the Teele exhibit showing actual results of operation in 1919. That shows a certain quantity of coal oil and 1949 other material used. I do not understand that that has been challenged in any way, except the inference to be drawn. For instance, that statement shows that their distribution expense was 31 or 32 cents a thousand cubic feet.

Mr. Neumann: Which is higher than in other years.

The Master: Higher than in other years; that includes that legal expense item.

Mr. Neumann: Yes.

The Master: Except as you criticize and challenge some of the items, the general results shown by Mr. Teele, you do not challenge, do you?

Mr. Neumann: I do not know what you mean by general result. The general result we have contrasted with other years and we have shown that they are abnormally high in the year 1919.

Now, take for instance, there is absolutely unexplained on this record, the daily record of manufacture, which contains the amount of coal and oil used day by day and at the end of the month there is an adjusted figure in some instances as high as 2,000 gallons of oil a month, added to what they used every day.

Now, if the daily record is correct, why was it necessary to add 2,000 gallons at the end of the month?

The Master: There was an explanation of that.

Mr. Neumann: There was not. The explanation was that that was an adjusted figure that was given to them by the Standard Oil Company and they accepted it without question. The witness Morrison testified to that very fully.

1950 There is something that they have absolutely left unexplained, and that is that they had 16,000 gallons more of oil than their entire capacity showed. They must have had it swimming all over the plant. The attempted explanation was that the oil was probably in the pipe that ran from the dock to the oil tank, and the witness Morrison knocked that into a cocked hat by saying that the oil was not measured until it reached the tank.

Now, then, there is another one that your Honor called attention to and that was that there was an error in the underlying dollar that found its way right into the journal, where 200,000 pounds of coal dust had been overstated as used. Now, that is not a small item, that is a large item.

Mr. Ransom: The readjustment of that shows——

Mr. Neumann: I have heard all about readjustment, but it has not been shown.

Mr. Ransom: The books show that.

Mr. Neumann: The books do not show it. You take your statistical data, we put it in for ever year that we could get from 1909 to 1919 and it absolutely and flatfootedly contradicts both your expenditures for this year and Woods' hypothetical testimony.

The Master: Let me ask you, Judge, while I have it in mind. What proof is there in this case other than the proof produced by the defendants on the actual cost of the property including franchise rates to your company?

Mr. Ransom: You mean the cost to this company?

The Master: Yes.

1951 Mr. Ransom: The only proof which has thus far been offered by the complainant is the Miller tabulation which showed two things. In the first place, the book cost of all tangible property since 1904, August 1st, and in the second place, the testimony of Mr. Miller as to the estimated cost of the property which there was in 1904 that is still in existence and in use; that is, he testified that the property in existence in 1904 and still in use, his estimated cost to the company as of that time, the reproduction cost and his estimate of what it had cost the company, was a certain figure. The complainant had not as yet offered proof of the cost to the company, the amount which the company paid, in 1904, for the property which it at that time acquired.

The Master: There was proof that certain securities were issued for it.

Mr. Neumann: There was no proof of that, quite the contrary. A witness was allowed to testify that they authorized one million dollars' worth of securities.

The Master: The books show.

Mr. Neumann: No. The way to have proven that was by the minutes of the Board of Directors. We showed that there are such

minutes. We called for their production, they have not been produced. There is no evidence upon that point upon which the Master can make any findings. I will say right now, if there is any finding made on that it will be like Mohammed's coffin, suspended in the air.

The Master: This is what bothers me. Assuming now that there is proof that certain bonds of a certain par value were issued, 1952 whether that represents the cost; in other words, whether I have got to assume that the par value of the stock and the bonds issued for it—

Mr. Neumann: That is what you will have to do; you will have to assume it.

Mr. Ransom: It is exactly on that question that the testimony of Colonel Miller became pertinent, because he offered testimony which was received showing the estimated cost of such of the property as was acquired at that time, as is still in existence.

The Master: Estimated value?

Mr. Ransom: Estimated cost.

Mr. Cummings: I thought his was reproduction cost.

Mr. Ransom: Of course, any estimate of cost is necessarily an estimate of reproduction cost.

Might I just say a word that I started to say when I was interrupted. The complainant in this case, of course has stood upon its direct case, upon the proof which it had offered, as to the present value of the property, based upon the cost to reproduce new.

The Master: Was there proof offered of the cost to reproduce the franchises?

Mr. Ransom: Well, of course, the Miller exhibit in that respect related to the tangible property and the so-called non-distributed structural cost in connection with the tangible property.

Mr. Neumann: I understood Mr. Miller especially excluded franchises from reproduction cost.

The Master: What I am trying to get at is, what basis have I for valuing franchises?

1953 Mr. Neumann: None at all.

The Master: I am asking Judge Ransom something, Mr. Neumann.

Mr. Ransom: I take it that from all of the evidence in this case the testimony of Col. Miller which related to that point, the evidence shown by the books, the evidence as to the acquisition of the property in 1904 and what was paid therefor, the judgment of the Board of Directors as to the value to be put upon those so-called intangibles—it is not a simple question, it is not a matter which has been adjudicated as was the situation as to the value of the franchises and rights in the Consolidated case.

The Master: That is what bothers me.

Mr. Ransom: I am fully aware that it is a difficult question.

The Master: Now, Mr. Neumann, what is it that is on your mind?

Mr. Neumann: Are you through?

Mr. Ransom: I have not yet started.

The Master: Let me see what is on Mr. Neumann's mind.

Mr. Ransom: Let me clear up the point I was discussing when I

was interrupted several times, namely, that we stand on the present value of the property. The defendants have now put in proof of what they call original cost of property. I have not had an opportunity yet to go over the statements which were put in in that respect, but I assume that we may desire to do in this case as we did in the Consolidated case, that is, they having put in proof of what they regard as the original cost of the property and having stood upon that as a basis, we in so far as they are either erroneous or incomplete shall endeavor to show that.

The Master: What have you got there?

Mr. Neumann: Your Honor will recall on July 31, 1904, there was a write-up of \$600,000. They hoisted the flag down on one company. The good faith of that transaction was attacked at the very beginning. This is a case of one company selling to itself some property, because Mr. Spear testified that there was not a stick of property added to the company in 1904, and yet over night \$600,000 is added, and that item is put in the franchise account, and here the exhibit shows that the Board of Directors and the officials of the company are identical in each case.

Now, if they think that that will stand as a bona fide transaction, why, it is something that no court will follow them on.

It is absolutely water of the worst kind.

The Master: But this is quite explainable to me—the same Board of Directors. It is quite possible that the New York & Queens, having bought all of the property from the Newtown & Flushing, concluded to continue the organization of the Newtown & Flushing and put their officers into the New York & Queens for that reason.

Mr. Neumann: And pay \$500,000 for it? The officers and directors show there were no new interests came into the company, it is the same old crowd, and it shows that they paid to themselves \$600,000. They have pulled down one flag and hoisted another, stuck in \$600,000 in the franchise account, and now claim a rate base based on that pure water.

1955 Mr. Ransom: It does not show that there were no different interests at all.

Mr. Neumann: You will have to show that to the Court.

Mr. Ransom: Let me talk for a moment.

Mr. Neumann: Where you show that the officers and directors were the same, you will have some difficulty explaining there were new interests. If you were able to prove it, the minutes of August, 1904, would be the best evidence, and the fact that you have not put them in evidence, although we called for them, is the best proof of that fact.

The Master: Let Judge Ransom talk, will you?

Mr. Ransom: I take it it is true that the directors for a very short time were the same or nearly the same. I do not know whether they were exactly the same.

The Master: They were identical, apparently.

Mr. Neumann: They were the same in all of those reports.

The Master: I ruled out reports prior to 1914, didn't I?

Mr. Neumann: 1904.

The Master: Yes, 1904.

Mr. Neumann: And it was too bad, because they were competent evidence.

Mr. Cummings: Yes, your Honor.

Mr. Neumann: You ruled them out before that.

Mr. Ransom: Just a moment, please. You took that report of the predecessor company.

The Master: Made by your company.

Mr. Ransom: Not made by our company, not made by the New York & Queens.

1956 The Master: Yes, it was. The Newtown & Flushing Gas Company, by New York & Queens Gas Company.

Mr. Ransom: But verified by the Newtown & Flushing Company, not sworn to by any person in behalf of the New York & Queens Company. No officer of the New York & Queens Gas Company made the report, no officer of the New York & Queens Gas Company certified to its correctness.

Mr. Neumann: Mr. Cummings offered these.

Mr. Cummings: We offer in evidence the report of the Newtown & Flushing Gas Company to the State Board of Tax Commissioners of the State of New York, for the year ending June 30, 1903, having been marked Defendants' Exhibit A-89 for Identification.

The Master: Let me see it (taking paper).

Mr. Ransom: That is objected to on the grounds indicated with respect to the offer of the 1901 report of the Newtown & Flushing Gas Company, on the ground it is in no way probative, competent or binding as against this complainant company. The theory of law or the theory of fact on which reports were made up by the predecessor company, or made up by any company under the law as it stood in 1903, was not competent or binding upon this complainant or prejudicial to the right of this complainant and its investors to a fair return at this time. Under the decision of the Court of Appeals in the State of New York in the Holmes Electric Company case a few days ago, even if it were a report of the New York & Queens Company for the present time it would not have such effect.

1957 Mr. Neumann: We have the reports here down to 1899.

I would like to call your Honor's attention to this—that in the merger documents that the complainant itself offered, the very first exhibits, they show that this company had developed as a result of mergers of successive companies, the College Point Gas Company, the Flushing Gas Company and the Long Island Illuminating Company, and the Newtown & Flushing Company, until eventually the company became the New York & Queens Gas Company. We submit that they must take the good with the bad, they cannot take the property without taking the declarations against interest that are made by the predecessor companies.

Mr. Ransom: The predecessor companies were owned and controlled by men in no way connected with the complainant company.

Mr. Neumann: Yes, but the difficulty is that the Board of Directors are the same all the way through.

Mr. Ransom: Not through those other companies that you have mentioned. There was for a time, following the formation of the New York & Queens Gas Company, the same list of directors as of the Newtown & Flushing Company.

Mr. Neumann: Here is the year 1902, Frank Tilford, Henry Wilson, Harry Snyder, and Charles Thomas. They are the same men.

Mr. Ransom: Of which company? The Newtown & Flushing.

Mr. Neumann: Yes.

Mr. Cummings: Irrespective of that, any statement made by the predecessor company would be binding upon its successor anyway, no matter who the officers were.

1958 Mr. Ransom: We have offered proof in this case of the property which the company now has; we have offered proof of its present value. There also has been brought out in connection with the cross-examination of some of complainant's witnesses, and on the defendants' case, proof of what the property now in existence and in use costs. The question of what companies prior to 1904 reported to the State Tax Commission as to their then officers, under the laws as then constituted, is not in issue in this case.

Mr. Neumann: We have even gone to the extent of showing that you issued \$66,000 worth of securities without proper authority. You may twist it as you want, but that is the fact, that in the year 1909 you issued \$66,000 worth of securities without proper authority.

Mr. Cummings: He says present value, your Honor. That is the mooted value here.

Mr. Neumann: Present value? He means reproduction cost.

Mr. Cummings: Yes, whether it is cost of reproduction new, cost of reproduction less depreciation, or what it is. There are all kinds of values. The present value is the problem here—what does constitute present value?

Mr. Ransom: The Commission can hardly raise the question now, that that issue of bonds subsequent to the organization of the Commission, for capital purposes, authorized and required prior to the formation of the Commission, was in any respect a non-compliance with the Public Service Commission's law. It was passed on by counsel, it was probably passed on by the Commission. There
1959 is not the slightest doubt about what has taken place in regard to the attitude of the Commission toward this company, and if there had been any violation of the Public Service Commission's law, with respect to the issuance of securities by this company it would have been dealt with by the Commission.

Mr. Neumann: But I do not see how you can get away from it.

The Master: Was there not some evidence in this case that at the time of the merger, so-called the New York & Queens owned all the stock of the Newtown & Flushing? Was there not a recital to that effect?

Mr. Ransom: It had to be so; it was the only way that they could do it.

Mr. Vilas: Under the merger statute it had to be so.

Mr. Neumann: Why, they owned everything.

Mr. Vilas: The resolution recites it.

The Master: That is what I thought. So that prior to June 30th, 1904, the Newtown & Flushing Company, according to the reports filed by the New York & Queens for the Newtown & Flushing, carried the property at \$600,000 less than the merged company carried it for. Isn't that so?

Mr. Neumann: On the 1st of August, yes.

The Master: On the 1st of August.

Mr. Neumann: Yes.

Mr. Ransom: Of course, some time prior to the 1st of August the New York & Queens had of necessity acquired all the capital stock of the Newtown & Flushing Gas Company, otherwise there could not have been a merger under the statute.

1960 The Master: And the New York & Queens owned nothing else?

Mr. Cummings: No.

Mr. Neumann: No, Mr. Spear testified to that very fully.

Mr. Cummings: Yes, Mr. Spear testified to that.

Mr. Ransom: Well, Mr. Spear's testimony in that respect speaks for itself.

The Witness: Where in this 1914 June 30th report does it give the value of the property?

Mr. Neumann: 1904?

The Master: Yes.

Mr. Tobin: Schedule E.

Mr. Ransom: Mr. Maltbie says values for the purpose of reports to the State Tax Commissioners is something different from any other kind of value.

Mr. Neumann: There is something you may be interested in, in looking at that note there, too.

Mr. Cummings: That is beside the question here.

Mr. Ransom: Under the law as it stood at that time and for two or three years after that reports of this kind were under the decisions of courts and the rulings of the board and advice of counsel made on the basis of what we may call the second-hand or scrap values. That is supposing the plant was dismantled and the units of apparatus sold.

Mr. Cummings: Scrap value?

Mr. Ransom: Which is a very different thing.

Mr. Neumann: Perhaps you would like to explain on the 1961 record how they came to put in \$600,000 in the franchise account overnight.

The Master: I do not see where it is in these reports.

Mr. Neumann: It is in the exhibit which we put in of the book figures.

The Master: That is what I want. What did the Newtown & Flushing carry franchises at?

Mr. Neumann: Here, I will give it to you in a moment. They are those figures that you said were not useful—that Mr. Cohen prepared (indicating to Master).

The Master: Well, they are not especially useful. It is the books themselves. What I would like to know is how much did the Newtown & Flushing carry the franchises at in 1904?

Mr. Neumann: We have it somewhere in these exhibits, if I can get it out for you. There is the exhibit (handing Master). That is the one you want to look at. That is what the Newtown & Flushing carried it at.

The Master: Where is the franchise?

Mr. Neumann: If you get the book we could get it for you in a minute. It is in one of these exhibits.

Mr. Cummings: There is a certain way of proving the value of a franchise, your Honor.

The Master: \$169,437, that is the way it has been carried for years.

Mr. Neumann: No, over here it is 303. Here it opens up the next day \$1,037,000, the very next day, under Franchises and Good Will. That is July 31, 1904, and this in August 1st.

Mr. Ransom: Where is your plant account in this AA-4, Schedule 1?

1962 Mr. Neumann: Why, the witnesses explained the whole thing to us. The Master asked me a question and I have answered it. He has asked me at what they carry the franchise, and I have shown him.

Mr. Ransom: Where is the plant in that—what he calls the assets side? There is real estate, mains and meters, meter connections and services, tools and implements, but in that statement of the Newtown & Flushing Company, 1900 to 1904, they have not shown any plant account.

Mr. Neumann: Yes, there is no doubt about it. I will show you what the detail is.

Mr. Ransom: No, you are speaking about after August 1, 1904. Of course, the plant is in since 1904, but my point is that it is not in your assets statement of the Newtown & Flushing company.

Mr. Neumann: We will stand on the record that we have made.

Mr. Ransom: Or fall.

Mr. Neumann: It is in here, I am satisfied of that.

Mr. Cummings: Your Honor, there is a certain way of proving the value of the franchise, and there is no such proof in this case—none whatever.

Mr. Ransom: Here is a company that was operating a gas plant, a gas manufacturing system, and the defendants put in an assets statement of the Newtown & Flushing Company that does not show any plant at all.

Mr. Neumann: And I say that we have put in an exhibit that does show the plant. But you had the witness here under cross-examination to prove these statements; if that was so, why didn't you bring it on?

1963 Mr. Ransom: That is the reason I say the New York & Flushing books are not binding on this complainant, because they are absurd on their face, that the company supplying gas to a great many consumers should be put down, even by your repre-

sentatives, as not having any gas plant. Obviously the most important element in a gas manufacturing and distributing system was left out.

Mr. Cummings: They forgot the plant, did they?

Mr. Ransom: No, when they acquired the property, of course they put in the plant.

Mr. Neumann: They acquired the plant and everything else.

Mr. Ransom: Yes, and put it in the books as they ought to do. If your accountants had their way, this company would not have had any plant on its books yet.

The Master: This Exhibit Y has a heading "Franchises, Good Will, Etc.," carried at 469.

Mr. Ransom: Yes.

The Master: That statement does not show any plant account.

Mr. Ransom: No plant account.

The Master: Exhibit A-8 likewise has an item Franchises, Good Will, Etc., \$1,037,000. Following that "Other Fixed Capital," \$365,000.

Mr. Ransom: Yes.

The Master: Do you say that your plant account is in that item "Franchises, Good Will, Etc.," on Exhibit A-8?

Mr. Ransom: Well, as shown by the note which has been for many years filed with the Public Service Commission, and as shown by

Col. Miller's testimony, there were substantial costs of the 1964 plant account that were included in that \$1,037,000 item, and the best proof of that is that various of these withdrawals or retirements or debits and credits, as they highly and euphoniously call them, are debits made against that \$1,037,000.

Mr. Neumann: If what Judge Ransom says is true, it is susceptible of proof and they ought to prove it.

Mr. Ransom: We do not need to prove it when you proved it.

Mr. Neumann: We will rest on our exhibits as we have entered them.

Mr. Ransom: I am only saying you charged against that \$1,037,000 retirements and physical property appurtenant to plant, showing that it was included in it. Of course, the situation at that time was a very unfortunate one, but it was not due to any one now connected with the company, it was not within the control of any of this company's present investors. But the facts are pretty clear in spite of the way it was handled, from an accounting point of view.

Mr. Neumann: If you are content to rest on the record of your exhibits, I am content to rest on our exhibits, knowing what they show; and you cannot distort them or twist them.

Mr. Ransom: I shall always be content to rest when I rest.

The Master: I have before me now an offer of this exhibit for identification.

Mr. Cummings: Yes.

Mr. Ransom: I have an objection to it, on the grounds stated in considerable detail.

Mr. Cummings: I think they are all competent, every one of them.

1965 Mr. Ransom: It is not competent on any issue here. If every company which enters into the public utility field or any other field is chargeable with every tax report that has ever been made by any of its predecessors, or any company which has been merged into companies of which it becomes a part, why, it is new law to me.

Mr. Cummings: That is the law, that certain statements in their reports, of course, are binding on their successors. There cannot be any question about that.

Mr. Ransom: Suppose a report in 1900 had said the Newtown & Flushing had no property, would that be binding on the present investors?

The Master: I had not thought at all of permitting this exhibit in as binding this company with relation to any figures reported in those years. The only question in my mind is whether I ought not get into the record the fact that for the year prior to 1904 the directors of the Newtown & Flushing were the same as those reported in 1904.

Mr. Ransom: That is not a basis for admitting the entire report.

The Master: No, I will not admit the entire report. That I have concluded on.

Mr. Ransom: If your Honor states that the reports do show that, I will admit it for the purposes of this case.

The Master: Then I will sustain the objection to the offer as made. As I understand it, Judge Ransom agrees, upon looking at the report and the fact so appears, and he admits, that during the year ending June 30, 1903, the directors of the Newtown & Flushing 1966 Gas Company were Frank Tilford, Henry R. Wilson, Harrison E. Gawtry, Lewis B. Gawtry and Thomas W. Stevens, and the officers of the company in that year were President Frank Tilford, Vice-President Henry R. Wilson, Secretary Harry L. Snyder, Treasurer Harry L. Snyder, and General Manager Charles Thomas.

Mr. Neumann: I take an exception to the qualified admission of the exhibit into evidence.

The Master: I did not permit the exhibit in evidence at all. I sustain an objection to it.

Mr. Neumann: I take an exception.

The Master: But Judge Ransom, meeting the point that was in my mind, has stipulated on the record the fact that these gentlemen named were directors and these other men named were the officers in 1903. So that in 1903 and in the period ending June 30, 1904, the directors of the Newtown & Flushing were substantially the same; with one exception, I think, of Mr. Gawtry.

Mr. Neumann: They were the same.

The Master: There was one exception.

Mr. Neumann: No, they were the same.

The Master: Stevens was the change.

Mr. Neumann: Yes, that was in 1903.

The Master: Yes.

Mr. Neumann: But in 1904 they were identical, as they were in

1905, of the New York & Queens. I show you the New York & Queens.

The Master: Yes, there are four directors in 1904 and 1905 of the New York & Queens—Frank Tilford, Wilson, Harrison 1907 and Gawtry, and Louis B. Gawtry. Stevens was dropped.

Mr. Neumann: Now, those are the same in 1904.

The Master: Yes, and in 1903 the same except that Stevens was there in 1903.

Mr. Neumann: Yes. Does your Honor want to see 1906, 1907 and 1908?

The Master: No, that was enough for what I had in mind. This company's officers and directors were the same as the Newtown & Flushing. This company owned all the stock of the Newtown & Flushing before the merger. Is it claimed by the complainant that upon that merger the New York & Queens set up these properties at a higher value and issued stock for it, in addition to what had appeared on the books prior to the merger, and leaving aside now the question as to whether other items are included?

Mr. Ransom: The position of the complainant is that immediately preceding August, 1904, and the month of July of 1904, the complainant company having acquired all of the stock and all of the bonds of the Newtown & Flushing Company, and having at that time acquired the property of the Newtown & Flushing Company, what was done and what was paid for it was in good faith, representing the judgment of the directors.

Mr. Neumann: Where is the proof of that?

The Master: Mr. Neumann, please do not interrupt.

Mr. Ransom (continuing): That the property acquired at that time was reasonably worth at least what was paid for it, and 1968 was reasonably worth what was set up on the books of the company.

Mr. Neumann: Where is the proof of that here? There is no proof of that here.

The Master: There is no proof in this record, as I recall it, as to what the New York & Queens Gas Company paid for the securities of the Newtown & Flushing. Is there?

Mr. Ransom: The book entries.

The Master: What?

Mr. Ransom: The book entries show it, do they not?

The Master: No.

Mr. Neumann: Showing \$600,000 worth of water.

The Master: No, that was on the merger. The stock of the Newtown & Flushing, the securities of the Newtown & Flushing, were purchased by the New York & Queens some time prior to the merger.

Mr. Cummings: Yes.

Mr. Ransom: And what was paid for that is shown by the book entries, which are in evidence—the balance sheets.

Mr. Cummings: That would not show the stock purchased.

Mr. Ransom: It does show the stock purchased.

The Master: I do not recall that it shows the stock purchased.

Mr. Neumann: Certainly not.

The Master: My recollection is that it shows the merger entries.

Mr. Neumann: Tell me how you are going to get away from the fact that in this report of 1904 Mr. Thomas himself 1969 reported that the market value of the stock was 90, not even par, and here you have paid \$600,000 more than what it was worth.

The Master: Wait a minute, I want to get this clear in my mind and get Judge Ransom's attitude about it, as to what the record shows. Assume, Judge Ransom, that the New York & Queens bought all of the securities of the Flushing plant, we will say, from the Newtown & Flushing, for a half million dollars, so that it owned all of those securities prior to the merger.

Mr. Ransom: As a matter of fact, it acquired the stock of \$600,000 and the outstanding bonds of \$650,000.

The Master: Where does that appear?

Mr. Neumann: That is taken out of the air.

Mr. Ransom: That is shown in the books, shown also by Defendants' Exhibit A-8, taken from the ledgers of the company, Schedule 2-A of Exhibit A-8. That is what the New York & Queens Gas Company paid for the stock and bonds which it acquired.

Mr. Neumann: Where is there any proof of that? That ought to be proved beyond a reasonable doubt.

Mr. Ransom: The proof in that respect is not as complete as it will be, for the reason that I have stated—the complainant did not stand on its direct proof, on the proof of what this property had cost this company; we presented *out* proof on the direct case on the theory of what the United States Supreme Court meant when it said that the company was entitled to a return upon the value of its property at the time that it used in the public service.

1970 The Master: Well, have you not passed over rather lightly the sentence that appears in the Willcox case—"Where, however, it appears that the value of the property has become abnormal now, so that the consumer on that basis would be required to pay an excessive price for gas, that some other rule must be adopted?"

Mr. Ransom: In 1909 there was that phrase in the opinion in the Willcox case, which seemed to recognize on the part of the courts that the value as of a given time might be high and hence would not be absolutely controlling. Rate making law was then, unfortunately, in its infancy. The matter has been very much more clearly discussed in recent cases.

The Master: Do you think it has grown up to adult age now?

Mr. Neumann: Do you think you have any decisions—

Mr. Ransom: Just let me answer the Master's question. I think that the Court has made substantial progress. I think that the decision in the Minnesota case and the like has clarified it somewhat. No one has a right to say with certainty that the Court has clarified the whole subject; I think the Court has established beyond peradventure that it is the present value, the value at the time of use, that is controlling. Of course, here in this case you have proof quite aside from the books, quite aside from its reproduction cost, that for a plant of this size, operating in a territory of this size, the necessary

investment is approximately \$2,000,000. That is, in order to erect and maintain and provide a manufacturing and distributing system of this kind an outlay of approximately \$2,000,000 of investment is required.

The Master: Let me ask you this. Assume now that the New York & Queens bought all of the securities of the Newtown & Flushing for a million dollars—and that figure has no relation to any proof in the case at all.

Mr. Ransom: I understand.

The Master: There was not any reason why on August 1st, 1904, there was any necessity for a merger, was there?

Mr. Vilas: Oh, yes.

Mr. Ransom: I say the situation was one which under the statute called for a merger.

The Master: Oh, right. Now assume that a merger was necessary, the fact remained that that property cost the New York & Queens a million dollars, did it not?

Mr. Ransom: I should think so.

The Master: What?

Mr. Ransom: I should think so.

Mr. Neumann: This is all pure assumption.

The Master: The mere fact that they saw fit to issue a million and a half securities on the merger would not change the cost of the property to them, once I find that they paid a million dollars for the property by getting all the securities prior thereto, would it?

Mr. Ransom: I do not see that that has any parallel with this case at all, because what is set up here was precisely what they paid; that is, this is not a case where they paid a million and set up a million and a half. They paid a million and they set up a million.

1972 Mr. Neumann: To whom did they pay it? They paid it to themselves.

The Master: In other words, your contention is that they paid for all of the securities of the Newtown & Flushing Company to the people who owned those securities, their securities aggregating \$600,000 of stock and some \$600,000 odd of bonds; is that right?

Mr. Ransom: Yes.

The Master: Let us assume that that is satisfactorily established in the record. Is it your contention that I have got to take that issue of securities at par, as indicating the cost to the company?

Mr. Ransom: I think it becomes a matter to be determined in the light of all the circumstances that have been developed. Of course, the judgment of the directors would not be controlling upon this court.

The Master: As to value.

Mr. Ransom: As to value.

The Master: No, I am talking about the price paid—the price, whether it was worth more or less. The par value of the securities paid was \$1,200,000, approximately. That \$1,200,000 approximately represented precisely the same property as they got.

Mr. Ransom: It represented their judgment as to what the property was worth.

The Master: Yes.

Mr. Neumann: No, I do not think that follows at all.

The Master: I do not think you catch my point—if Mr. Neumann will keep quiet.

Mr. Neumann: I do not want an atmosphere created at the end of this case that we are acquiescing in it, because we are not.

1973 Mr. Ransom: Oh, we are not at the end of this case yet.

The Master: I simply brought up this discussion because I found we would have a few minutes and I want to finish it while I am here; because when we finish it I will be pretty badly rushed. What I am trying to get at is this: Assuming now that I find as a fact that the New York & Queens Gas Company acquired all of the securities of the Newtown & Flushing Company at sometime prior to August 1st, 1904, and that the purchase price therefor, the consideration therefor, was \$1,200,000 odd of the securities of the New York & Queens Gas Company—

Mr. Ransom: \$1,250,000.

The Master: Now, I found as a fact that the consideration paid by the complainant company for the Newtown & Flushing Company and its assets was \$1,250,000 par value of securities. Now, suppose I want to find one step further, that the price paid in money at that time, as bearing upon the value, was X dollars, do you say that I must take the par value of these securities, or determine what those securities were worth in the market at that time, as indicating the consideration in money rather than in securities?

Mr. Ransom: Do I understand your question to be that in determining the amount of money or the amount of consideration that was paid for the property acquired—

The Master: In money.

Mr. Ransom: Whether you would be bound by the par value of the securities or whether you would be bound by the market price of the securities, or by something else?

1974 The Master: Yes. How am I to find, if I think it necessary to find, what was the cost of the Flushing plant to your company in the terms of dollars, how can I get at it, assuming now that I found that the consideration was in fact those stocks and bonds?

Mr. Ransom: I think that should be determined from all of the circumstances developed with reference to the transaction at that time.

The Master: You see in the Consolidated case, to interrupt you, the Court said that that was the price that was ratified practically by the State by acquiescing, and all the rest of it, and I had no trouble. Now, in this case, if you had paid as a consideration a carload of apples I could easily have found what the market price was for a carload of apples at that time, and could have given what that represented in dollars. Or, if you had paid it in United States bonds, or some other marketable security, I could have told how much in money that represented. Now, how am I to determine in dollars what those stocks and bonds represent?

Mr. Ransom: I think you would have to determine it—the same kind of question is continuously determined in the business world.

It is a matter of determining from all of the circumstances, and such proof as can in fact be produced.

The Master: What those securities were worth?

Mr. Ransom: What the money value represented by those securities was.

The Master: Now, you say that that report is 90.—

1975 Mr. Neumann: Thomas, in his report says that the stock was sold for 90, the Newtown & Flushing stock; that there were only a few private sales.

Mr. Ransom: When?

Mr. Neumann: Right there in his report.

The Master: Does it say anything about what the New York & Queens Gas Company stock was?

Mr. Neumann: No. How are you going to find that this was a bona fide transaction, with the same officers and directors, is more than I can understand.

Mr. Ransom: It may still be bona fide.

Mr. Neumann: In a case where you are required to prove it beyond any reasonable doubt.—

The Master: It was the New York & Queens, it says no market value, but a few private sales were made at 90.

Mr. Neumann: I think the other one is here, too, at the same price, I am not sure. Yes, here it is. Evidently the stocks of both companies were on a parity, 90.

The Master: There was no market for the bonds, but a few private sales at 90.

Mr. Neumann: How are you going to get away from the proposition that this is a sale made by the same people and the same interests to the same people and the same interests is more than I can understand. How can you show that that is a bona fide sale?

The Master: In a case of that kind is required, just as Judge Greenbaum said in the Kings County case, to scrutinize the thing with the greatest care.

Mr. Ransom: That is why I have said to this Master that 1976 I have felt that while the par value of the stock is not controlling, he should scrutinize it carefully in the light of all the circumstances. I think that with such scrutiny, and with an examination of all the facts which have been brought out, that a conclusion should be reached, that the value was—the consideration expressed in terms of dollars—was equivalent to the par value of the stock.

Mr. Neumann: And just as soon as the Master does that you are going to get an abortive judgment that won't do you any good.

The Master: Mr. Chambers, have you anything else?

Mr. Chambers: I haven't anything else.

Mr. Tobin: I would like to offer in evidence complaint filed with the State Tax Department against the Special Franchise assessment in the years 1917, 1918, 1919 and 1920. That complaint for 1920 was filed with the Tax Department, December 15, 1919. For the Special Franchise assessment of 1919, the complaint was filed with the Tax Department on December 11, 1918. As concerns the Special Franchise assessment of 1917, the complaint was filed with the Tax Department on January 10, 1917.

Mr. Ransom: I object to that offer on the ground that they have no bearing on the issues of this case, because the Special Franchise Tax is of course based on a theory in connection with gross and net earnings, and of course when the gross earnings are less than the operating expenses, as in the 1920 complaint shows the effect is a diminishing of the franchise value.

1977 The Master: I think they are all in the same form.

Mr. Tobin: They are all in the same form.

Mr. Ransom: Of course it is only a matter of degree. They all show that the gross and net earnings of the company having been destroyed by the action of the public authorities as represented by the legislature, there is, of course created a situation under which the Special Franchise tax which would otherwise be assessed cannot with propriety be assessed.

Mr. Neumann: I understand the rule to be in rate making cases that franchises are of no value for rate making purposes anyway.

Mr. Ransom: Counsel fails to distinguish between the value of franchises and rights for rate making purposes, and this anomalous thing that we have in New York called the basis of the Special Franchise assessment, which is predicated in part upon the earnings of the company.

Mr. Tobin: But you can't get away from the fact that you have the two elements, you have the tangible property in the streets, which is one element, and you have the intangible property.

The Master: I will sustain the objection.

Mr. Tobin: If your Honor please, this is proper evidence in this respect: These complaints are proper evidence of what the company said its franchises were worth, and also as to what they said the tangible property in the streets was worth. They are admissions against interest—

The Master: No. I think these complaints as Judge Ransom points out, have relation to a particular rule of law applicable
1978 to the assessment for franchise purposes.

Mr. Tobin: You have the two elements that go to make up this property, the tangible property and the intangible property. They made complaint as to the intangibles, and say it is too high, but they surely cannot deny what the value of their property is in the street.

The Master: For taxing purposes the value of the property in the street may be nothing.

Mr. Ransom: That is not in here.

The Master: I will sustain the objection.

Mr. Tobin: We are surely permitted to put them in evidence as admissions against interest. You asked only a short time ago what the franchises were worth, and we are trying to prove what they are worth.

The Master: Objection sustained.

Mr. Tobin: Exception.

Adjourned to Tuesday, June 22, 1920, at 9:30 A. M.

Last Complainant's Exhibit 104.

Last Defendants' Exhibit A-112.

VS.

CHARLES D. NEWTON, &C., et al.

Before Abraham S. Gilbert, Special Master.

New York, June 22, 1929.

Met pursuant to adjournment.

Present:

Mr. Ransom and Mr. Vilas, of Counsel for Complainant.

Mr. Chambers, Mr. Tobin and Mr. Cummings, of Counsel for Defendant Newton.

Mr. Neumann, of Counsel for Defendant Lewis Nixon, Public Service Commissioner.

BENJAMIN COHEN recalled.

Cross-examination.

By Mr. Vilas:

Q. Take your Schedule No. 14, Mr. Cohen. You have under taken to classify expenditures shown on the books for engineering and superintendence into three classifications, have you not?

A. I grouped that under three headings.

Q. And that is your grouping?

A. That is my grouping.

Q. Not the books?

A. My grouping, taken from the indications on the bill, as to the groupings into which it would fall.

The Master: What groupings?

The Witness: Douglaston Extension, Flushing Works, and other items that I could not group.

1980 Q. You did not find any such division in the account?

A. No, sir.

Q. And in that table, under the heading which you call, "Particulars," you have put down what?

A. I have put down the detail of the charge, condensed as much as I could condense it, taken from the bills or other sources where I could find them?

Q. Then it is your own summary of what the bills or other underlying papers show?

A. It is my condensation of the reading of the bill. If a bill was very lengthy I condensed it, taking out the gist of the bill.

Q. And what you show in the column headed "Particulars" is not found on the books?

A. The books contain no detail of these charges; the details are all given on the bills.

Q. And it is the detail on these bills which you have condensed into the column headed "Particulars?"

A. That is correct.

Q. Now, take the first item of \$1,408.48 entitled "Services of engineers and superintendents on construction projects to 7/31/16," what project or classification other than Flushing Works or Douglaston Extension did you find that belonged to?

A. The bill did not state. That is the reason I put it in the last column, where I have unclassified items. I did not attempt to interpret the meaning of any of these items. I simply took the bills as they were and put them into these groups.

Q. To what construction project prior to July 31st, 1916, could that item have belonged other than to the works?

1981 Mr. Neumann: I object to that as incompetent, irrelevant and immaterial. That is something for the officers of the company to explain, not our accountant. We took these figures from the books.

Mr. Vilas: You did not take this classification from the books.

Mr. Neumann: Well, the company's officers must explain that. They are under three columns—

Mr. Vilas: We cannot explain what he undertakes to do.

Mr. Neumann: We could not explain what projects they belonged to, it is for the company to explain, and not us.

The Master: Well, Mr. Cohen has classified them. I will overrule the objection.

Mr. Neumann: Exception.

A. I found this bill read—I believe that is the way I have it here, "Services of engineers and superintendents on construction projects to 7/31/16." I found nothing on the bill to indicate whether it applies to the Douglas Extension, to the Flushing Works, or any other particular construction, so I did not attempt to read into the bill anything which I did not find on it, and so I put it in the last column.

Q. You found no charges to Douglaston Extension prior to 1919 or 1918, did you?

A. The exhibits reads for itself; you can see that.

Q. Can you answer that question?

Mr. Neumann: I object to that.

The Master: These things are so utterly unimportant that I would not waste time objecting, Mr. Neumann. It is cross-

1982 examination.

Mr. Neumann: I know, but it kind of puts a wrong light on the thing.

Mr. Vilas: The witness has put a kind of wrong light on the thing.

Mr. Neumann: We took the books as we found them.

Mr. Vilas: We don't know where these tables lead, your Honor.

Mr. Neumann: Perhaps you would like to explain what that \$5,000 was to Jackson.

Q. So as not to spend too much time on one item, take the third item, "Services of engineers and superintendents on construction projects, manufacturing and holder plant 8 31 16 to 12 31 16, \$1,938.51?"

Mr. Neumann: Now, if the Court please—

Mr. Vilas: I have not finished my question.

Mr. Neumann: You will find that the journal folio is given right on the exhibit, where that entry is taken from. It is absolutely useless cross examination.

Mr. Vilas: May I finish my question?

Q. That you have shown in the column headed "other." What manufacturing and holder plants did you have in mind when you put that in the column headed "other" instead of under the Flushing Works?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial. The witness has stated that he does not know, that he has simply taken it from the books and the bills. It is for 1983 the company to explain it, not for us.

The Master: Well, this is argument, isn't it?

Mr. Neumann: What?

The Master: This is really argument. It does not go to the competency or relevancy of the question.

Mr. Neumann: Why, the exhibit shows the books and the folio from which it was taken.

The Master: What is the question?

(Question read.)

The Master: You don't have to ask that. What is the point?

Mr. Vilas: He classifies something for the manufacturing and holder plant, when it is perfectly plain there is but one, and it could be nothing but the Flushing Works. I don't know why he classifies it over here, or what use is to be made of these classifications.

The Master: What is the importance of this exhibit anyhow? What is it intended to prove or disprove, or to show?

The Witness: It does show practically the overhead in connection with the construction.

The Master: Do you say it is too much?

The Witness: I am not saying that.

Mr. Neumann: Perhaps they would like to explain what that \$5,000 item is to Jackson.

The Witness: What I tried to show here were the charges for overhead on the Douglaston Extension.

Q. You were seeking to get the overhead on the Douglaston Extension?

A. No, I was not.

1984 The Master: Wasn't that what you just said?

The Witness: I had not finished my answer before I was interrupted. I was trying to show the overhead on the Douglaston Extension, and the overhead on all the other plants where I could classify it.

The Master: For what purpose?

The Witness: So we could get the overhead on this particular plant for Mr. Maltbie's analysis of the fixed capital account. Furthermore, there are charges in here like this \$5,000 for D. C. and W. B. Jackson, which we wanted to bring out.

The Master: Why do you want to bring that out?

Mr. Neumann: The reason we want to bring that out, we want the company to explain it. Why shouldn't the company explain what they paid \$5,000 for?

The Master: I think I understand this when I read it. They paid for a survey of production and distribution systems of the company, its operating methods and territory served, for the purpose of ascertaining what changes should be made to increase the service to large industrial consumers.

Mr. Neumann: And with all the services of the Consolidated at their hands, and paying the Consolidated from time to time, they have got to go outside and pay \$5,000 to some man to survey their plant.

The Master: Who is D. C. and W. B. Jackson?

Mr. Neumann: I don't know.

1985 The Master: You don't want me to understand that the mere fact that there is a \$5,000 item would cause suspicion in my mind?

Mr. Neumann: I think the company should be required at least to show what that \$5,000 was spent for.

Mr. Vilas: This exhibit shows what it was spent for.

The Witness: May I continue my answer for a moment?

The Master: Yes.

The Witness: Furthermore, we wanted to bring out an item like this \$500 item below that. There is no detail on the bill. It says special service, Gas Works.

Q. Is that why you classified it under "Other" instead of under Flushing Works?

A. Because I found nothing on the receipt to indicate where it is to go to.

Mr. Neumann: Where would you want it classified?

Q. When a charge is made for special services at Gas Works, wouldn't you deduce therefrom that it was probably at the Flushing Gas Works?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial, and to say the least, a most violent assumption.

The Master: Objection overruled.

A. I refrained purposely, in accordance with what I understood to be the policy in court here, from making my interpretation of any of these items. I followed the items through just the way the bills read.

Q. And when it said, "Gas Works," and did not say, "Flushing Works," you put it under that column headed, "Other"?

1986 A. If I found nothing to indicate what it was I put it under the column, "Other."

The Master: In other words, that did not indicate anything to you where it said, "Gas Works"?

The Witness: I did not try to interpret it.

Mr. Ransom: The company has only one gas works. Even the witness ought to have known that.

Q. Take the item of April 30, 1919, "Services of Engineers, Draftsmen and so forth, April, 1919, Douglaston Matters, \$2.91; Flushing Appraisal, \$111.89; Boiler Feed W. H. \$31.89." Now, this "Boiler Feed, W. H." you classified under "Other." Why did you do that?

A. I did not try to ascertain whether the boiler feed water heater was in any particular place, for the same reason I explained before.

Q. You thought it might be out on the distributing system somewhere?

The Master: I think you have asked enough to indicate the line on which this paper has been prepared.

Q. Take your Table No. 15, are you now prepared to say that the title of that account is as it appears on the books?

A. I am prepared to say now that I took the title of the account from Mr. Miller's exhibit, which he has entitled, "Cost of Miscellaneous Items to extent separately shown by books," and in which he calls this item, "Office Development of Douglaston Extension." In other words, that is his interpretation of the account, which I took from this exhibit.

Q. You took it from him and not from the books?

1987 A. Not from the books.

Q. Take the two items found together near the middle of this table, \$6.00, L. Wiggins, paid from petty cash, and \$7.80, petty cash payment to R. Hirshfield, did you take those from the vouchers or did you take them from the books, or from what source did you get them?

A. Those were taken from the books. Naturally the Journal entries do not show any detail, and we had to go to the vouchers or bills in order to get the details.

The Master: What is the purpose of the exhibit? The exhibit Mr. Vilas is now talking about?

The Witness: This is an analysis of the account which they call "Douglaston Development."

The Master: What was the point of that paper, what do you want to show by it?

Mr. Neumann: Objected to on the ground that it is incompetent, irrelevant and immaterial.

The Master: Then I will ask you. He is your witness. What was the purpose of this?

Mr. Neumann: Mr. Miller put in a table somewhat like this, this is to match it.

The Master: All right, go on.

Q. Do you say that you went to the vouchers or did you go back of the Journal?

A. We went back of the Journal. In connection with this I want to say that the last day I was up to Fifteenth Street I did not have the books up there, and I called up the Queens office, and read off every item on this sheet to Mr. Foy, who is the bookkeeper there, who Mr. Spear put on the 'phone when I called up, and he checked me up over the telephone on every item on there, to save me a trip out there, and to enable me to get here on time.

The Master: Have you had any trouble at all in getting access to the books or vouchers of this company?

The Witness: I found no trouble.

The Master: Perfectly free access was given to you?

The Witness: Of course at times they need the books over there.

The Master: But there isn't any complaint on your part as to the facilities?

The Witness: I personally have none.

The Master: I asked that question, Mr. Neumann, so as to get it on the record that there was nothing thrown in the way of your accountants. I think this Complainant Company is entitled to have a finding on that, if that is the fact.

The Witness: With the exception, I want to state here that I have asked—there are about five or six of my letters in which I asked for information that they never even answered, but the material covered by the question in those letters has been asked for under a subpoena by Mr. Neumann.

Mr. Neumann: That was that notice to produce. That notice to produce was based upon Mr. Cohen's statement to me that they would not give him these books.

The Master: Oh, I remember. They were all produced in court.

Mr. Neumann: Yes. The difficulty with that was that we wanted to make an analysis of it before hand, and we were refused, and that is why I had the books brought into court.

The Master: You did get a chance to analyze them then, didn't you?

The Witness: I never saw them.

Mr. Ransom: Mr. Frank had the Flushing and Newtown books.

Mr. Neumann: What is the use of talking about Mr. Frank, when you know Mr. Frank left the Commission?

Mr. Ransom: In February and March, 1919.

The Witness: That is not what I asked for.

Q. I show you petty cash receipts Nos. 711 and 712. Are those the items that are referred to in this table that we are talking about?

A. I have never seen these, but I presume they are.

Q. What is No. 711 charged to?

Mr. Neumann: Objected to as incompetent, irrelevant and immaterial; the paper speaks for itself.

A. I found that it is not always an indication that the account appearing on the slip is what they charged it to.

Mr. Vilas: I ask for an answer to my question.

Mr. Neumann: If the Court please, I think the proper way to cross-examine this witness would be to produce the book here to show that this item is not in the books.

Mr. Vilas: I asked a perfectly plain question.

The Master: You mean on the face of the voucher what is it charged to?

1990 Mr. Neumann: That is different.

The Master: The face of the voucher directs that it be charged to Suspense, does it?

The Witness: Yes. Let me explain—here is the point about the Suspense Account. Many of the items are charged to Suspense initially, and perhaps two or three days later they are taken out of Suspense and thrown into the account that I have here.

The Master: Is that what happened to this particular item?

The Witness: Undoubtedly.

Q. That is what you assume happened?

The Master: Undoubtedly, but did it?

The Witness: It did, for the simple reason that I have this right here, I took this right from the Ledger, and I have this item here.

Q. Take under 712.

A. It was charged to Sundry Debtors. That is the same case. We found that a pretty cash payment was made to Hirschfield. Prior to making the cash payment to Hirschfield they credited Hirschfield and charged this account. It is merely a cancellation of a cash entry, that is all it amounts to.

Q. I show you petty cash vouchers 740 and 761. Did you ever see those?

A. I stated I have not seen any of them; I simply checked it back over the telephone.

Q. How much is No. 740, the first one I show you?

A. \$5.00.

Q. What does it appear to represent?

The Master: I think we are wasting time.

1991 A. It appears to represent Douglaston Development.

Q. What is the second one?

A. \$8.80.

Q. That also is Douglaston, isn't it?

Mr. Neumann: By that you mean it appears on the initials that it is charged to that account.

The Master: Mr. Vilas, do you contend that these items are not in the books that this witness states they are in?

Mr. Vilas: I contend he has made up a faulty calculation, because he has not gone to the vouchers.

Mr. Neumann: Do you contend that these items are not in the books, in the account he says?

Mr. Vilas: The total of these vouchers is the same as Nos. 711 and 712.

The Master: \$13.80, yes.

Mr. Vilas: And these two are \$6.00, and \$7.80.

The Master: What is the point?

Mr. Vilas: The point is, he has put two items in this statement that do not belong there. He simply made a mistake.

The Witness: I can answer that question very readily. I called up Mr. Foy, your own bookkeeper——

The Master: Well, Mr. Foy may have made a mistake. Are you able to say now, when you find that these vouchers, Nos. 711 and 712 aggregate \$13.80, and vouchers 740 and 761 aggregate \$13.80, which ones are referred to in that item?

1992 The Witness: No, I could not say that.

Mr. Neumann: If the Court please, there is another item of \$13.80, November 25, 1918.

The Master: All I want Mr. Cohen to say whether it is possible that that entry covers 740 and 761 instead of 711 and 712. What is the date of it?

The Witness: September 2d.

The Master: But the entry in the book is of what date, the journal entry?

The Witness: The journal entry is, the date is September 2nd, I believe, would be the journal entry here.

The Master: How do you claim there can be any misunderstanding about that, Mr. Vilas?

Mr. Vilas: Well, it is perfectly plain.

The Master: If the journal refers to September 2nd——

Mr. Vilas: I don't know how he got this. He has got two charges in there that do not belong in the Douglaston Extension. His amount may be correct. He has got two vouchers that do not belong there, and a result that is pretty certain to happen when you check over the telephone.

Mr. Neumann: Well, why don't you get your books here and show it?

The Master: Have you got these two items in the Douglaston Extension?

Mr. Vilas: Yes. They are coincidences. He happened to get the two items and added them up and made his balance.

The Master: See if you can add it up and check it.

1993 The Witness: It would be pretty hard to state. For instance, there is an item of \$22.02 miscellaneous cash payments.

The Master: On what date?

The Witness: November 26th.

The Master: Well, these are in September.

The Witness: That has nothing to do with it, because the payments may not have been made until later on.

The Master: Petty cash payments.

The Witness: Petty cash payments.

The Master: May have been made two months after the event?

The Witness: Well, why not? Here are these two slips we just had, one of them is charged to sundry debtors and afterwards it is paid by petty cash.

The Master: All right. I think I understand that.

Q. Well, Mr. Cohen, did you check all of this table 15 over the telephone?

The Master: Yes, he has said so.

The Witness: I told you that I tried to get the New York & Queens Ledger over, and I was told that in order to close up their month that therefore it would be impossible for them to bring it over, and we agreed that they could read the items over the telephone to me, which they did. Now, if your bookkeeper either intentionally or unintentionally made a mistake—

The Master (interrupting): I think it would have been very much more useful if the defendants had taken Mr. Teele's exhibit and had directly challenged particular items on that exhibit, 1994 showing where those books were wrong or those figures were wrong, instead of preparing other tables matching these tables.

Mr. Ransom: And then explain their errors by saying they got it over the telephone.

The Master: Yes, and then it means the complainant has to come back—

Mr. Neumann (interrupting): What do you mean by "their errors?"

The Master: Talk to me, Mr. Neumann. We don't want any more newspaper publicity here, not that it was your fault, but I am going to avoid it hereafter. If you will just address your remarks to me, and Mr. Chambers will when he has anything to say, we will avoid any personal conflict.

You see, here is the situation. Mr. Telle comes in with a tabulation showing expenditures, then your accountants go out and make other tabulations in another form. Well, I am not able to match them up, in a way I am simply making the statement now because it is too late to go back and change anything in this case, but there are five or six more cases that all of you men will have to try out, and I think if your accountant will take the tables or tabulations offered by the complainant, analyze them and point out where they are wrong and where there should be readjustments made in those accounts, that you will give the Master a good deal more assistance than he gets by this kind of testimony.

Mr. Neumann: Yes.

The Master: I suggest that, because I know that your attitude has been rather an attitude of co-operation than otherwise, and I am simply suggesting it to you as working out, I think, in a great deal better form than you are getting now.

Mr. Neumann: That would be true, probably, if they would give us sufficient time to get these tables in advance. I am not talking about this case, but I have in mind another case that we are going to trial on the 29th—

The Master (interrupting): The 29th of this month?

Mr. Neumann: Yes.

The Master: What case is that?

Mr. Neumann: The New York & Richmond. I suggested there to the counsel for the complainant—

The Master (interrupting): You are not in that?

Mr. Ransom: No, I am not in that.

Mr. Neumann (continuing): That he ought to give us those tables, and he said, "Why, to allow you to tear them to pieces? I guess not."

The Master: That is what they are for.

Mr. Neumann: That is exactly what I said.

The Master: Counsel for complainant in this case and in the Consolidated case did offer their tables long in advance. I think one learns, of course, as you get more and more into these cases—I took the Consolidated record as it came in, because I was not familiar enough with the kind of case to make any suggestions, and I took these as they came along because I felt that I could probably follow them very easily, but I can see now where it will be very much better. I understand you are in the Brooklyn Union case, aren't you?

Mr. Neumann: Yes.

The Master: You are not in that, are you, Mr. Ransom?

Mr. Ransom: My office is.

The Master: Well, I understood from Judge Mayer last night that the Brooklyn Union case does not go on until September.

Mr. Neumann: September 8th.

The Master: Well, now, if they get these tables well in advance of the hearing, they ought to be in a position to introduce before the Master in that case the points of contact, challenging particular items that are in dispute, so that they can get on. And then you have these five or six other subsidiary Consolidated cases where you men are counsel, and I will tell you now that if I am Master in those cases I shall insist upon the defendants not preparing a new set of tables which I have got to match up and try to arrange a puzzle card, but to directly point out the items as to which there is dispute. Now, of course, it is true those cases won't come on until next September either, next fall, some time—

Mr. Ransom: Well, I am not so sure of that.

The Master: I am.

Mr. Neumann: I might say this to the Master, not in criticism of Mr. Teele—

The Master (interrupting): Especially if you get an injunction, you won't be worried about it.

1997 Mr. Ransom: It depends on the injunction. If we get less than \$1.25 we will have to shove them.

Mr. Neumann: I might say this, that Mr. Teele's statements give you the summarization without any detail.

The Master: Well, don't let us get into that now. Go ahead. Is there anything else, Mr. Vilas?

Mr. Vilas: I would like to call Mr. Maltbie now.

Mr. Chambers: I want to ask Mr. Maltbie one question which will be decisive of the whole case, I think.

MILO R. MALTBIE recalled:

Direct examination.

By Mr. Chambers:

Q. Mr. Maltbie, in your opinion, would it be a fair way to determine the fair value of a gas-making plant or gas-making property, to base it upon so many dollars per thousand cubic feet of gas sold by that company?

A. It would not, in determining the value that way. You might work out—

Mr. Ransom (interrupting): Just a moment. I object to the question as not within the province of this witness to answer.

The Master: I will take it.

Mr. Ransom: Exception.

Q. Why, Mr. Maltbie?

A. You might work out, as a result, after you have determined the value of the property, its equivalent in dollars per thousand cubic feet of gas sold, but it would not be proper to reverse the process and state the number of dollars per thousand cubic feet of gas sold in the first instance as the value of the property.

By the Master

Q. You are just working around in a circle. Why not?

A. Why not? Because you can't determine actually the value of the property by establishing so many dollars per thousand cubic feet of gas sold.

Q. Why not?

A. Because it can't be done that way.

Q. Well, why not?

A. The value per thousand cubic feet of gas sold varies greatly from plant to plant, and you don't know what that value is for any specific plant before you have gone through it in detail.

Q. But if a man needs a thousand cubic feet of gas, it requires a certain manufacturing plant to produce it?

A. It requires more manufacturing plant relatively to produce it in a small plant than it does in a large plant.

Q. Yes, but it requires manufacturing plant?

A. It certainly does.

Q. It requires a distribution system?

A. Yes it does.

Q. Where there is a large plant with a very large consumption, the thousand cubic foot unit is lower than in a smaller plant with a smaller consumption?

A. All other things being equal, it would be.

Q. Yes. You take Manhattan Island, for the purpose of argument only, it may be \$4?

A. It may be, yes.

1999 Q. And assuming for the purpose of the discussion, and only assuming the figure for that purpose, that on Manhattan Island, where there are a great many consumers per mile of main, where the consumption is very high, and \$4 represents the fair value of the property, the same property in a territory like the Flushing territory would be worth more, wouldn't it?

A. It probably would be worth more, but not more than four dollars.

Q. What?

A. Not worth more than \$4.

Q. Why not?

A. Because \$4 is a high figure.

Q. Well, irrespective of the figure, it would be worth more in the territory like Flushing than it would be in a territory like Manhattan?

A. Generally speaking, yes.

The Master: That is all?

Mr. Chambers: That is all.

Cross-examination.

By Mr. Ransom:

Q. Have you with you your working papers from which you computed your figures on working capital. Exhibit A-112?

A. I have my working papers.

Q. What elements did you take into consideration in arriving at the various figures you have set down opposite the years 1904 to 1920, both inclusive?

The Master: What exhibit is that?

Mr. Ransom: Table 40.

The Master: I mean what do those figures relate to, working capital?

Mr. Ransom: Yes.

2000 A. In the first place I ascertained the facts regarding the general conditions of the company as to the reading of meters.

Q. What elements did you take into consideration?

The Master: I thought Mr. Maltbie was telling us.

Mr. Ransom: I did not ask him yet what he did.

The Master: Well, just state the elements.

A. I ascertained what the general practice of the company was as to the reading of meters, the collection of bills, the time that elapsed between the reading of meters and the payment of bills, the periods that the company had within which the company had to pay for its supplies, the amount of weekly payments for labor in production expenses, the amount of supplies on hand as shown at the end of

each year back to 1904 or 1905, I took into account the accounts receivable, sundry consumers particularly, that is the amount of accounts receivable for gas sold; the relation to the monthly bills for gas sold; the amount of cash which the company had had on hand as shown by its balance sheets; operating expenses as shown by exhibits in evidence; and there may have been a few other things that I considered, but those are the principal things.

The Master: May I interrupt just to go back to a question a moment. You said, as I understood you, Mr. Maltbie, that the cost when analyzed back to the thousand cubic feet of plant, including distribution system, for a territory like Flushing would be more than in a territory like Manhattan?

The Witness: Ordinarily, yes.

2001 The Master: Can you tell me about how much more, what percentage more, 10, 15 or 20 per cent more?

The Witness: No, I cannot; it varies.

The Master: It varies a great deal. Well, what makes it vary?

The Witness: Well, it is not only the density of operation, but it is the relation of the peak load to the average during the year. It is a question of the character of the plant in the making of gas, whether it is all water gas or all coal gas or both.

The Master: How would that matter?

The Witness: Because with the water gas plants you have got a more flexible unit; you can crowd it and overcrowd it.

The Master: Well, this is a water gas plant we are talking about, isn't it, at Flushing?

The Witness: I believe so.

The Master: Well, now, compare a water gas plant with a water gas plant on Manhattan, and, assuming the same general character of plant, and assume further the same general character of average demand, with the peak load; I would like to get your judgment, taking as nearly as possible the same kind of a plant, worked on the same general condition in Manhattan as over in Flushing.

The Witness: Well, it is pretty hard, your Honor, because in Manhattan you have got sub-surface conditions on the other side that are worse than any city that I know of or know anything about, with the possible exception of Boston, and that runs up the cost of main-laying considerably.

2002 The Master: So that the cost per mile for that reason would be higher on that item in Manhattan than in Flushing?

The Witness: Yes, very much higher.

The Master: Yet you say, taking it as a whole, it would be higher in Flushing than in Manhattan?

The Witness: Yes, taking it as a whole, I think so.

The Master: I was trying to get, if I could, your judgment as to how much higher. Giving you what is in my mind, Mr. Miller, I think it was, said that this plant per thousand cubic feet of gas sold was worth, in his opinion, between \$3.00 and \$6.00, I think he said, per thousand cubic feet of gas sold. That would be about from 25 to 50 per cent more than my finding in the Consolidated case. I was trying to get your opinion with reference to it.

Mr. Ransom: I object to the question, as the witness hasn't any qualifications for passing upon that kind of a matter.

The Master: I want to get his opinion for what it may be worth anyhow.

The Witness: Take the two cities of Albany and Utica, very close together, and very similar plants and under the same management; yet, when you go to work it out, there is quite a little difference in the cost per thousand cubic feet of gas sold.

The Master: Caused by what?

The Witness: Caused by various factors, any one of which affect it, and some affect it one way and some another. Utica is a flat city, hasn't the difficulties as to laying of mains that Albany has. On the other hand, Albany has a denser consumption of service on the mains than Utica, so that the various factors work one way and another, and it is almost impossible to tell in advance how they are going to work out until you have gone through the work in detail.

The Master: But you know this Flushing plant, don't you?

The Witness: Only in a general way.

The Master: By that you mean you don't know the character of the neighborhood and territory?

The Witness: Oh, I have been through that territory, yes.

The Master: Do you know the character of the streets in which the mains are laid?

The Witness: Yes, generally speaking; I have gone through Flushing.

The Master: You have seen the plant?

The Witness: I have been by it; I never was in it.

The Master: And you do not feel that you could give me any information as to how much more the Flushing plant is worth per thousand cubic feet than Manhattan?

The Witness: No, I could not do it.

The Master: All right, go ahead.

By Mr. Ransom:

Q. In connection with your item of materials and supplies for each of those years, you obtained your information from Defendants' Exhibit A-10?

A. In part.

Q. From what other source do you claim that you obtained information as to the amount of materials and supplies on hand from 1901 to 1920, other than A-10?

A. I think that is the only source I utilized as showing the amount of materials on hand.

Q. The amount which you allowed for materials and supplies as shown in your working papers varies substantially from the amounts of materials and supplies for the respective years shown on Exhibit A-10, does it not?

A. In certain cases it varies substantially from the amounts used.

Q. Well, now, Exhibit A-10 shows for 1904, for example, materials and supplies on hand \$13,260.09?

A. On one date it shows that. My figures are the average for the year.

Q. What amount did you estimate for materials and supplies for 1904 in making up your working capital?

A. Well, the preliminary figure I used was \$10,000. I rounded off the results and raised them at the end, but that is the figure that I used.

Q. That is the figure you put in your working papers?

A. That is the figure in my working papers, yes.

Q. Do you know what amount of materials and supplies the company had on hand on any other date in 1904 than that shown in Defendants' Exhibit A-10?

A. I do not.

Q. You did not examine?

A. I did not. Some years my figures are more and some years they are less than shown in Exhibit A-10.

Q. Well, on what basis, in 1904, did you reduce by over 2005 \$3,000 the figures shown on the date which the defendants' experts selected to show the 1904 materials and supplies?

A. In the first place, in 1910 you only had \$10,000—

Q. (Interrupting.) I am not asking about 1910.

A. I am giving you my reasons. You want to know the reasons, and I am giving them?

Q. Well, about 1904?

A. Yes. Well, I am giving the reasons.

Q. But about 1910?

A. Well, that is—no, I said nothing about 1910.

Q. What year then?

A. I spoke of 1905. In the first place, on August 1, 1905, you only had on hand about \$10,000 in materials.

Q. And in 1906?

A. Just a moment.

Mr. Chambers (interrupting): If the Master please, you said I should address my remarks to you. Suppose counsel permits the witness to answer the question, particularly when he calls for reasons.

Mr. Ransom: Counsel for the complainant is endeavoring to get the witness' answer.

The Master: Read the questions and answers referred to.

The questions and answers were read by the reporter.

The Master: You see, Mr. Chambers, very frequently counsel believe that the witness has reached a period and has finished his answer, and promptly proceeds to ask another question. I frequently do, believing the witness has finished, when, as a matter of fact, the witness has not completed his answer; then you jump right 2006 in and immediately start a row upon the theory that there is an unfinished answer, that the witness has not been permitted to finish his answer.

Mr. Chambers: No, I did not start a row. He discovered. —

The Master (interrupting): If Mr. Maltbie has not finished that

previous answer, I am going to let him finish it, that is all there is to it. Have you finished, Mr. Maltbie?

The Witness: No; the stenographer did not read the question that was interrupted.

The Master: Read the question.

The question and answer referred to were read by the reporter.

The Master: I thought he answered that question.

Mr. Chambers: No; there comes a time when he discovers the witness had not completed the answer, and then he starts to run a footrace with him and cuts him off.

The Master: I thought he had finished.

The Witness: No, I have not.

The Master: Now, if Mr. Maltbie says he had not finished, I will let him go back and finish it.

Mr. Chambers: He hardly began.

The Master: I will tell you that I thought he had finished his answer, and I may be just as mistaken as you claim Judge Ransom is. Now, Mr. Maltbie, finish your answer.

The Witness: In the second place, I took into account the operating expenses and the materials used in 1904 and 1905 and later years; the amount of gas made in 1904 in relation to later years, and also examined the details of the materials and supplies in 2007-1904, and noticed that the coal was about \$3,000 higher than in the next year and in subsequent years when more gas was made, consequently I took the average of \$10,000 for the year 1904 as fair and reasonable for the amount of materials and supplies.

Q. You took a figure of \$10,000 for 1906?

A. I did.

Q. In spite of the fact that Defendants' Exhibit A-10 showed materials and supplies of \$23,413.69?

A. On one date it shows that.

Q. On the date which your experts selected?

A. Not that my experts selected. On the date given in this exhibit and on the date for your balance sheets, as shown in Exhibits Y, A-8 and A-9.

Q. You took the same figure of \$10,000 for 1906 that you took for 1905, although there was upwards of \$4,000 more of coal alone in 1906?

A. On one date in 1906 there was—that is, August 1st there was about \$4,000 more than there was on one date in 1905.

Q. And you do not know how much there was during the winter of those years when coal was to a larger extent used?

A. Well, of course there was a larger amount of coal used ordinarily in the winter months than in the summer months.

Q. And gas oil, too?

A. Yes.

Q. And you have taken, or had some one for the defense take, or some one for the defense has made up, an Exhibit A-10 based upon the quantity of coal and oil and other supplies on hand on

2008 the first day of August, and you have used that as your basis for whittling down?

A. I have not.

Mr. Chambers: I object to the words "whittling down." It is stale—it is a stale phrase.

Q. You have used the item of \$10,000 for the years 1904 to 1908?

A. I did.

Q. Inclusive—didn't you?

A. I did. Subject, as I say, to the fact that after adding those figures together there were a number of items that I increased and rounded off.

Q. In spite of the fact that in 1906 the total shown by the defendants' own exhibit was \$23,000 and for 1907 was \$19,694.77, and for 1908 was \$12,922.88?

A. No, your statement of facts is not correct according to the exhibit. You are comparing different dates now?

Q. Well, on December 31st. For some reason the defendants' Exhibit in 1908 switched to December.

A. I understand the date of closing your books switched.

Q. And the figure is \$12,922.88 at that time?

A. On December 31, 1908, that is the figure. On August 1st it is about \$9,500.

Q. \$9,576.61?

A. Right. And you will notice that in later years, even in December, the amount of material and supplies on hand fell below \$11,000. But it is around \$11,000.

Q. Let us see. In 1909, \$11,928.61.

A. Right.

Q. In 1910, \$17,707.89?

A. Right.

2009 Q. In 1911, \$10,631.59?

A. And I allowed \$14,000 in that year.

Q. Well, we will come to that in a moment.

Mr. Chambers: We are to it.

Q. In what years do you claim it fell below \$10,000?

A. I said around \$10,000. It fell below \$11,000 or \$12,000.

Q. In one year. In 1911 it was \$10,631; in 1912, \$16,008.43; in 1913, \$17,628.91.

A. 1915, \$11,591.35.

Q. No, that is 1914.

A. 1914.

Q. 1915, \$12,694.10?

A. Right.

Q. 1916, \$16,216.34; 1917, \$25,139.83; 1918, \$42,465.25; 1919, \$39,375.13.

A. Right.

Q. In 1909, why did you raise the amount of materials and

supplies to \$12,000 when according to the defendants' Exhibit A-10 it decreased from \$12,922.88 to \$11,928.61?

A. In the first place, the amount of materials and supplies on hand on any one date is not an index necessarily of the average amount of materials and supplies required during the year, which is the thing which must be considered in working capital. In the second place, the amount of working capital ordinarily needed must have relation to the amount of gas that is sold and the way you collect your bills. In the third place, this allowance is for working and construction capital and must have a relation to the amount of work done. So taking into account all those factors, I raised the amount in 1906 from \$10,000 of the previous year to \$12,000 in 1909, notwithstanding the fact that that is more, slightly, than the company had on hand on December 31, 1909.

Q. Then in 1910, although the defendants' own Exhibit A-10 showed \$17,797.89, you allowed only \$13,000?

A. On one date; on one date only.

Q. What did they have on any other date?

A. I cannot tell you.

Q. You did not examine?

A. But if you take the average for the end of 1909 and the average at the end of 1910, you would get something around \$15,000.

By the Master:

Q. You do not get the average at the end of the year, Mr. Maltbie.

A. Sir?

Q. You do not get the average at the end of the year?

A. No, I say if you averaged the amount at the end of the previous year and the amount at the end of the following year, you would get about \$15,000.

Q. Yes, but suppose it developed that the amount of material on hand at the end of the year was the lowest amount in the course of the year; would that be fair then?

A. No, I don't think it would, and it would not ordinarily be the case.

Q. Have you made any analysis of that to determine that fact?

A. In a general way I have.

Q. With respect to working capital, Mr. Maltbie, would you say that a company situated such as this Queens Company is in Flushing, with the character of business and the volume of business it did, required a larger working capital per thousand cubic feet than the Consolidated?

A. In cents per thousand cubic feet of gas sold?

Q. Yes.

A. I should say it required more.

Q. How much more?

A. Well, of course, my opinion of so much more would be obtained by comparing this figure with the Consolidated figure, and I do not recall what the Consolidated figure worked out in cents per

thousand cubic feet of gas sold. But I have tried to make them up on the same basis, that is, allowing for the difference in different factors and the difference in conditions between the two companies.

By Mr. Ransom:

Q. You say that you varied the amounts of actual material and supplies on hand as shown by Defendants' Exhibit A-10 according to the amount of gas sold by the company in the different years?

A. No, I said that was one of the factors to keep in mind. It is one of the things that I had before me when I determined the amount.

Q. How much gas did the company sell in 1909?

A. 149,496.9 M cubic feet. I am reading from Defendants' Exhibit A-12.

Q. What, in 1908?

A. Well, the calendar year is not given on those exhibits. You will have to approximate it by taking the five months that are given and taking $7\frac{1}{2}$ 12ths of the year which ends July 31st.

Q. What figure did you take in your calculations?

A. Well, I split it up that way.

2012 Q. What figure did you get as a result?

A. I do not remember the figure, but it would be—(witness makes calculation)—well, that would give approximately 130,000 to 135,000 M cubic feet in twelve months.

Q. How much?

A. 130 to 135.

Q. How about 1910?

A. That figure on Defendants' Exhibit A-12 is 168,664.8 M cubic feet.

The Master: As against what in 1909?

The Witness: Against in round numbers 146,500. As a counterbalancing factor there is this, that as between 1909 and 1919, for instance, the percentage of gas unpaid for at the end of the year, or at the end of the month, in relation to the amount of sales during that month, improved; so that the time that they had to carry working capital decreased in 1909 to 1918 very materially.

Q. From what exhibit are you taking your figures as to the amount of gas sold?

By the Master:

Q. Well, in arriving at a figure for working capital the court cannot possibly arrive at an absolutely accurate figure in the sense that a figure can be demonstrated to be the figure that they will need, can it?

A. No, it is a matter of judgment.

Q. It has got to be an approximation?

A. Yes, it is a matter of judgment.

Q. It may be more or less than the figure you reach and may be more or less than the figure Mr. Miller gets?

A. Why, of course.

Q. In other words, the Court has got to view it from every angle. One business man may feel that he ought to have more than another; isn't that so, Mr. Maltbie?

A. Oh, certainly.

Q. Some business men feel that they ought to have more working capital and other business men want to work on a closer margin of working capital?

A. Yes.

Q. So whatever figure I report in this case is simply my judgment of what ought to be enough.

A. Yes, there is not any well recognized rule which takes into account all the factors and which gives you a mathematical result that is absolutely accurate.

Q. That is what I mean.

A. Yes, it is a matter of judgment.

By Mr. Ransom:

Q. According to Defendants' Exhibit A-12 in 1911 the total sales of the company were 184,000,000 plus cubic feet?

A. That is correct.

Q. In 1913 they were 220,000,000 plus cubic feet?

A. That is correct.

Q. How did you apply or use those figures, as to the amount of gas sold, so as to reach the conclusion that there was the same amount of materials and supplies required in 1911, 1912 and 1913, in face of the fact that in those years the amount of materials and supplies actually on hand had increased 70 per cent?

A. On certain dates it had increased, but the principal offsetting consideration to the increase in the amount of gas sold is the fact that in 1913 the relationship of the amount of money due from consumers was materially less in relation to the amount of sales in December, as compared with any preceding year, and that goes to offset what, considered by itself—that is, the increase in sales—would require, namely, an increase in materials and supplies on hand. That is, the increase in sales alone would require a larger amount of working capital, but that is offset by the improvement to which I referred, which lessened the amount of working capital.

By the Master:

Q. Let me ask you this, Mr. Maltbie. What was the material on hand December 31, 1918?

A. All materials and supplies, December 31, 1913, \$42,465.25.

Q. And December 31, 1919?

A. \$39,375.13.

Q. So that in both years it approximated about \$40,000, did it not, roughly?

A. Yes.

Q. Would you say that was too much to have on hand?

A. No, I think under the conditions that existed in those years, that was about a reasonable amount.

Q. Did you start with that figure?

A. Did I what?

Q. Start in arriving at your working capital figure with that amount of \$40,000?

A. I used in 1919 for materials and supplies \$40,000, and 1920, \$35,000.

Q. Why less in 1920?

A. Because the Douglaston Extension was made in 1919 and that would require more working capital, and, generally speaking, companies are not making extensions. I do not know of any material amount of construction work to be done this year.

2015 Q. But in 1918 they were not doing any material amount of construction work at Douglaston?

A. But that was the war year.

Q. We are still in the war year, are we not?

A. To some extent, but not as to the uncertainty of supplies. You will recall, your Honor, that in the Fall of 1918 and the beginning of 1919 conditions as to coal were very uncertain, and that is reflected by the fact that December 31st, 1918, they had coal on hand to the extent of \$27,203.90 and the preceding year about \$10,000, and the following year about \$13,500.

Q. But you do not want to intimate that the coal condition has settled to the point where they ought not to carry as large a supply of coal as they can get, do you?

A. Well, I do not know as to how large a supply they could get. I should say that the conditions at present do not require the carrying of such a large amount of coal as they did in the winter of 1918 and 1919.

Q. Do you think the coal conditions have improved?

A. I think the coal conditions, as far as carrying a supply and the fear that the supply may be cut off, are better now than they were in that winter.

Q. Mr. Maltbie, I, of course, do not know the first thing about it except what witnesses tell me here, but I do read the newspapers. I do read the newspapers, and sometimes the newspapers do accurately report facts.

Mr. Chambers: Unless they are inspired.

Q. (Continued.) Have you any information at all with reference to the articles I have read in the newspapers within the last few weeks, that because of the shortage of cars, there is apt to be a tremendous difficulty and a real problem for coal users this fall and winter?

A. Well, of course, I have not made a careful and detailed investigation of that subject. The only information I have on that is the general talk that I have with coal men whenever I run across them and in other cases at the present time. Of course, it is a problem just now that I have to keep in touch with in these other cases all the time.

Q. How about these official statements being given out daily as to the difficulties which will be encountered this fall and winter in getting an adequate supply of coal, and the advice given to the public to put in their coal if they can get it?

A. My opinion about that, your Honor, is that it is put out to a considerable extent to stimulate purchase and storage of coal this summer. I think they have over-exaggerated what is likely to happen this fall and winter.

Q. The Government officials are doing that, are they?

A. I think so, and wisely so.

Q. You do not think there will be any real trouble?

A. No; I think there will be real trouble; there has been real trouble for several winters now.

Q. Well, let us pass to the materials for a minute. You add to this \$35,000 for 1920 and approximately \$40,000 for the year before what, for any other item?

A. I add \$20,000 in 1919 for operating expenses which they must advance before they get the money back from consumers.

Q. How do you get at that figure? What is the weekly payroll?

2017 A. That is the very thing I was going to turn to first. If I remember rightly it is about \$1,500. Yes, \$1,500.

The Master: I hope you do not mind my asking this, because I want to get a picture in my mind as to how Mr. Maltbie got at these figures.

The Witness: \$1,500.

Q. A week?

A. A week.

Q. And you arrive at your \$20,000 how?

Mr. Ransom: May I just ask you where you get the idea it is \$1,500 a week?

The Witness: Mr. Cohen gave me that figure.

The Master: What do you say the books show, Judge Ransom?

Mr. Ransom: \$2,000.

The Master: \$2,000 a week?

Mr. Ransom: Yes.

The Master: How did you get at your \$20,000?

Mr. Ransom: And the refund of deposits and petty cash payments will bring it up to about \$2,600 a week.

The Master: What is that?

Mr. Ransom: I say the refund of deposits and petty cash payments bring it up to \$2,600 a week.

The Master: According to the books in evidence?

Mr. Ransom: Yes.

The Master: That is your contention?

Mr. Ransom: Yes.

The Master: I would like to have Mr. Maltbie tell me how he gets that \$20,000 figure.

2018 The Witness: Taking this \$1,500 I at first multiply it by 6 as the maximum period—that is 6 weeks in which the com-

pany would have to carry these payrolls before they would get the money back from consumers. That gives me about——

Q. About \$9,000.

A. That gives me about \$9,000. The monthly payroll as given to me by Mr. Cohen from the company's records was \$750 a month and I took——

Q. Just let me interrupt a moment. Does that agree with the books?

A. Well, wait just a moment. He gave me a figure of from \$650 to \$800 a month and I took \$750.

Mr. Ransom: \$750 is about right, I think.

The Witness: That I took for half a month, inasmuch as the monthly payrolls are paid at the end, after the person renders his service, and not in advance, which would give about \$500. That would give me \$9,500. Then I made an analysis of the materials and supplies that are used and charged in the operating expenses for production and transmission and distribution and commercial, and I included some rent which they paid and other operating expenses, and I found that they had a figure, a weekly figure, for those, of about \$4,700. I took that at two weeks, because they buy their supplies on thirty days' time, and two weeks more would bring it up to the six weeks. That would give me \$9,500 and that would give \$19,000, which I rounded off to \$20,000.

The Master: In order that I may get this clear in my mind, are there any other items that you claim Mr. Maltbie should have included in the working capital—not as to whether he took the correct figures or the correct period, but whether there is any other item he should have considered?

The Witness: Well, I took cash.

Q. Cash on hand?

A. Yes.

Q. How much is that?

A. In 1919. That is \$20,000.

Mr. Ransom: Where do you get the idea that the monthly payrolls are at the end of the month?

The Witness: Why, that is the general practice of paying men monthly.

The Master: Well, just one moment, Judge Ransom. The question I have in my mind now is this, Judge, and this is what I want to get clear. Mr. Maltbie says in arriving at the working capital figure he took this amount for materials and supplies on hand, for materials and supplies going into production.

The Witness: And the wages.

The Master: And the wages, the weekly wages and the monthly salaries and the cash on hand. Now, those are generally the items, are they not?

The Witness: Those are the three items.

The Master: What I want to get from you, Judge, is whether there is any class of items he has omitted at all in these calculations?

Mr. Ransom: Well, he has entirely omitted accounts receivable and he has omitted gas furnished, but not yet billed, except to the extent that in some backhanded way it may be partly included in this operation expenses advanced or whatever he calls that.

2020 Q. Have you included Accounts Receivable?

A. No. Accounts Receivable are represented here by the operating expenses advanced; that is the cause of the accounts receivable. That is the materials and supplies and the wages that are paid to make the gas which has been furnished, which is billed to consumers.

Q. What was the amount of the receivables?

A. At the end of 1919 the accounts receivable for sundry consumers—that is, the gas that is supplied—is \$17,033.72.

Q. How about the gas supplied but not metered or billed; what do you do with that?

A. Well, I have taken that into account when I allow six weeks' supply. That is the month and then the two or three weeks more.

By Mr. Ransom

Q. How much of this \$20,000 had been billed—do you regard as having billed, so that it shows in the Accounts Receivable, and how much not?

A. Well, I do not know whether I can answer that question, but I should say that one-tenth of the sales for 1919, that being taken as about the average for the year, would give \$25,000. I did not state that correctly: One-tenth of the sales for the year as a general thing represents the consumption during December, and comparing that with the amount of accounts receivable on hand at the end of the year, one gets one-tenth of sales at \$25,800 for 1919, and the accounts receivable were as I just said, \$17,000.

Mr. Ransom: To answer your Honor's question, you can see the contrast between what the witness has done and what we claim. He

2021 has an item Materials and Supplies \$35,000, we have a claim of \$60,000. He has an item of cash \$15,000, our figure is \$50,000. This is as of the present time. Our accounts receivable item is \$35,000 and gas furnished to consumers but not yet billed \$20,000, makes a total of \$55,000, against which he has \$20,000. In other words, his total figure is \$70,000 and our total figure is \$165,000.

The Witness: Yes, I looked your figures over and I notice that you put in more materials and supplies than you had on hand in December, and the amount is supposed to be the maximum, and you include more cash on hand. The amount of cash I allowed on hand is an amount slightly in excess of the amount your balance sheet shows you had on hand.

Mr. Ransom: Colonel Miller testified, of course, the company did not have enough of materials and supplies, and the coal situation and the oil situation has been disclosed.

By the Master:

Q. As I understand it, Mr. Maltbie, on December 31, 1919, the company had on hand approximately \$40,000 of materials and supplies?

Mr. Ransom: \$39,375.

A. Right.

Q. They approximately had \$20,000 of cash in office and bank?

A. No, they had on hand at the end of 1919 \$41,337.88, as shown by Defendants' Exhibit A-9.

The Master: And the receivables you said were seventeen thousand and something?

The Witness: Right.

Q. Well, that \$41,337.88, then there is a cashier fund of \$500?

2022 A. Well, \$42,000. When I get within \$500 of this amount, it is pretty good.

The Master: Well, I won't get within \$500 of what it ought to be, I am sure.

Q. And Liberty Bonds, which are the equivalent of cash, \$2,200?

A. Do they want the consumers to pay for the Liberty Bonds they bought out of patriotism?

The Master: Don't get into an argument. Gas furnished to consumers but not yet billed, that has got to be an estimate. Taking the basis of the complainant's estimate of working capital, if the accounts receivable are only \$17,000 at the end of the year, the gas furnished to consumers but not billed could not be as much as \$20,000, could it?

Mr. Ransom: The accounts receivable amounts to \$17,033.72 for sundry consumers and sundry debtors \$13,839.38.

The Master: What is sundry debtors?

Mr. Ransom: Gas appliances and rental appliances.

The Master: Gas furnished to consumers, according to your figures, would be about two-thirds of the receivables wouldn't it? That would be about the proportion, Mr. Maltbie?

The Witness: No, I would say it would be a little more than that.

The Master: A little more than two-thirds?

The Witness: Yes.

The Master: So that the receivables, if that is \$17,000, you think perhaps the gas furnished but not billed would be as much as \$14,000?

2023 The Witness: Possibly.

Mr. Ransom: Well, the receivables are more than \$17,000.

The Master: Receivables for gas furnished is only \$17,000.

Mr. Ransom: Receivables for gas, yes.

The Master: So, on the basis for receivables for gas, then the gas furnished but not yet billed ought to be perhaps \$14,000?

Mr. Ransom: Accounts receivable, sundry creditors, is \$17,033.72. For consumers other than gas, it is \$13,839.38.

The Master: But the item of gas furnished to consumers but not yet billed has relation to the \$17,000 and not the \$13,000. Now, taking your basis of calculation, Mr. Maltbie, this gas furnished but not billed would be about \$14,000 as against \$17,000?

Mr. Ransom: I would not think it had relation even to the accounts receivable from sundry consumers. It has relation to the amount of the month's business. It is about two-thirds, I think of the month's business.

The Master: What do you claim is a month's business, about \$30,000?

Mr. Ransom: About \$30,000, yes.

The Witness: There is one thing I want to call your attention to. You are including now prepayment meters. There is 25 to 30 per cent of this gas sold through prepayment meters, and if anything, they collect a little more at the end of the month than they have actually supplied, so there could not be any gas supplied to prepayment meters but not billed.

2024 Mr. Ransom: There is gas supplied to prepayment meters but not collected. The money is in the coin box of the machine, and you could not, as one of the cross-examining counsel the other day suggested, collect from these prepayment meters every day, because the number of men required to make the collections would amount to more than the amount taken from the coin box.

The Witness: This applies to three-quarters of the gas sold instead of the entire amount of gas sold.

The Master: I probably have it in my mind so I can reach a conclusion that will not satisfy anybody.

The Witness: I would say this about the sundry debtors—I have not included or deducted from the amount of working capital otherwise obtained anything in regard to the money obtained from the consumers who rent appliances and pay in advance. I considered that would offset any amount due under sundry consumers for that amount. There is no working capital needed for that, generally speaking, although they might book the amount that is due. That is the reason I have not taken into account accounts receivable from sundry debtors.

Q. How much of the rental of appliances did you in your calculation figure was paid in advance? Not the second or third year?

A. No, as I understand it, they get it promptly the first year, because they won't put it in until they get it, but the second and third year they do not collect it very promptly, and there is quite an
2025 amount of bills due from consumers for the rental of appliances because they do not collect the money as fast as does the Consolidated Gas Company.

Q. What part of the gas sold by this company did you figure was sold through prepayment meters?

A. Twenty-five to thirty per cent.

Q. Where did you get that figure?

A. Those figures will be found by taking the figures in Defendant's Exhibit A-11 and Exhibit A-12. We will take 1919 as just an illustration. The prepayment sales were 78,255 M cubic feet, and the entire amount of gas sold was 336,241 M cubic feet. That is not quite twenty-five per cent in that case. In 1918 the total sales amounted to 327,585 M cubic feet, and prepayments amounted to 81,266 M cubic feet. That is almost exactly one-quarter there. And, so on. It is thirty per cent in some of the earlier years.

Q. You say it is between twenty and twenty-five per cent?

A. No, I said for this entire period, from twenty-five to thirty per cent. It may fall a little below twenty-five, but those are round figures.

Q. Well, it was nearer twenty than twenty-five in 1919?

A. No, I would not say so.

The Master: How much do you allow for working capital?

The Witness: In 1919, \$80,000; in 1920, \$70,000.

Q. Now, in this second column on your working papers, what you call Operating Expenses Advanced, under that heading you included Cost of Materials used for two weeks?

A. Yes.

2026 Q. What materials?

A. Coal and oil are the principal ones, and materials used for repairs. There are sundry supplies, but generally speaking, coal and oil are the big items.

Q. Where did you get your figures for the cost of these materials?

A. I took the operating expenses in dollars.

Q. And divided it into a two-weeks' period?

A. And got two weeks period out of the total yearly cost. In round figures I took—well, I divided by 50 and multiplied by 2, a shade in your favor, but that is all.

Q. On what basis did you select two weeks, why two weeks instead of some other period?

A. Well, the first thing I did to get that period, I compared your accounts receivable from Sundry Consumers, that is for gas sold, with one-tenth of the annual sales, and I found that that comparison showed that the bills on the average for gas were paid from about 14, 15, to 20 days after the bill was rendered, that is, at the present time. Going backwards, in 1909 it was a much longer period. It was over two months, as I recall, at that time, instead of six weeks.

Q. Then you didn't allow anything for gas furnished but not yet billed, that is, you did not take that into the basis of your calculation?

A. Well, not specifically.

Q. Or in any way?

A. Yes, as a general consideration I did.

Q. How?

A. Because a great many of these things like your prepayment meters, that is only one month for twenty-five per cent, it is
2027 not over a month unless it is because of your own fault in not going around to read the meters every month, but I have

taken six weeks on the entire amount, which is four weeks on twenty-five to thirty per cent, to offset the six weeks on others, and also to offset particularly the amount of gas furnished but not billed.

Q. Why did you compute the cost of weekly labor for six weeks, and the cost of monthly payrolls for only two weeks?

A. Well, the weekly payrolls are paid at the end of each week, and in six weeks there would be six weeks which had been paid at the end of six weeks. In a month they would have made one monthly—they have got one month's services before the payment is made, and taking six months as a basis, they have to carry that monthly payment two weeks before the cash came in.

The Master: But if they paid the monthly wages twice a month, or four times a month, it would change it?

The Witness: Slightly, but that is only \$500 or \$600.

The Master: But it would change it?

The Witness: It would. You remember, of course, that I got \$19,000 and rounded it up to \$20,000, so if you doubled it you would not get over the \$20,000 I allowed.

The Master: I suppose I will have to do some rounding up myself.

Q. Take your figure of \$4,000 for what you call operating expense advanced for your 1904 working capital, can you divide that up between the three elements of cost of material used for two weeks, cost of labor for five or six weeks—

A. No, I didn't work it out in detail.

2028 Q. Or cost of monthly payrolls for two weeks?

A. No.

Q. As to any of these years you cannot give the division or the proportions of these three items?

A. No. I worked it out, as I have said, for the last years, and then made a pro rata decrease with the other factors in mind.

Q. Take 1919, can you give the details and proportions of those items in that year?

A. That is what I am speaking about. That is the year for which I have given \$1,500.

The Master: But you could not work it out the way Judge Ransom says?

The Witness: I thought I had worked it out.

Mr. Neumann: Yes, that is what he said.

Q. Have you used the same proportion in all the years?

A. Practically so, yes. The monthly payrolls are not an important element, and they might have been thrown in and treated on a weekly basis, it would not have made any change in the figures.

The Master: Judge Ransom, why isn't it fair to take as working capital for the purposes of this case, the amount of material and supplies you had on hand December 31, 1919; cash on hand; receivables, Sundry Debtors' receivables; and \$20,000 for gas furnished but not billed.

Mr. Ransom: That would be true if this company was operating under what might be called ordinary conditions, or if the conditions reflected as of the end of the year 1919 were in your judgment typical conditions so far as the quantity of cash, or 2029 the quantity of materials and supplies on hand are concerned.

There are three factors that you have got to take into account: In the first place, with respect to materials, conditions are adverse, especially as to the principal item of coal. The quantities are low. In the second place, this company has been hamstrung by this inadequate rate, and it has been having to get along from pillar to post. It is not a fair, adequate working figure, it is not the kind of a figure which the officers of this company, or of any company, would want to try to get along on if they were having to deal with a condition over a period of years. The situation in that respect becomes this: They lack the necessary funds, they are hamstrung by a rate, they cannot get the necessary funds, the rate does not yield them. Consequently, they are on an inadequate cash basis. They cannot get coal both because of the lack of money and because of the lack of coal.

The Master: The item of \$20,000, being about two-thirds of a month's supply of gas, is not subject to these variations?

Mr. Ransom: I think not.

The Master: Assuming that I follow your theory of arriving at working capital, the \$13,000 for Sundry Debtors' receivables is not subject to these variations?

Mr. Ransom: No.

The Master: The \$17,000 for gas receivables is not subject to these variations?

Mr. Ransom: Well, you have the two figures reversed.

2030 The Master: No, I have not. Now, those three items are not subject to these variations.

Mr. Ransom: Not at all.

The Master: The \$41,000 cash on hand you think ought to be more?

Mr. Ransom: I think that was an inadequate item.

The Master: And the \$40,000 of materials on hand you think is too small?

Mr. Ransom: Under ordinary conditions it would be.

The Master: It was not at any time prior to 1919.

Mr. Ransom: The thing you have got to take into account, of course, is that materials and supplies cost very much more now. While the amount of money shown in the immediately previous years, or in the years back of that, going back to any time when the volume of sales was very much smaller than they are now, there is the question of the amount of money reflected by a given quantity of coal, and of course so many dollars in coal now does not represent anything like the supply of coal that same number of dollars would have represented in any previous year.

The Master: Are you going to call any other witness on this question in rebuttal on working capital?

Mr. Ransom: I may have to on questions that are strictly rebuttal.

The Master: Well, go ahead. I think I know what I want to do about it.

2031 Q. I have already called your attention to the large increase in sales from 1911 to 1913, and the fact that you made no increase of materials and supplies in spite of that increase in sales. Going to the second column with respect to these same years in which sales increased so largely, I find that you have put what you call operating expenses advanced as follows: 1911, \$11,000; 1912, \$12,000; 1913, \$10,000; and then \$10,000 for a number of years thereafter, in spite of the continuance of a sharp rate of increase in sales?

A. Precisely, and I explained that once before by saying that in 1912, or in 1913, the relation of accounts receivable to the total sales in December had very greatly changed. Consequently there was not the same need for working capital for 1912 that there was before.

Q. How greatly changed?

Mr. Chambers: He has been all over that once.

A. In 1912, as shown by your balance sheets, the amount due from Sundry Consumers was in round figures \$17,300; in 1913, it was \$14,800, notwithstanding the fact that your sales had greatly increased.

The Master: Why don't you get a more accurate result, Mr. Maltbie, by working on the other theory, taking the receivables, gas sold but not billed, cash on hand, and the materials and supplies that ought fairly to be on hand from time to time, instead of working it the way you do?

The Witness: In the first place, accounts receivable represent not what the company has put in, but what they are charging. It 2032 covers their profits, and their reserve fund, and their taxes, and other things which do not have to be paid in advance.

Furthermore, it does not contain any allowance for the buying of bills on thirty and sixty days' credit. It goes in just the same whether they are paid in thirty or sixty days, or whether they are paid by spot cash. Now, to make allowance for those two important items, in my opinion you have got to work it out the other way.

The Master: Well, that is not the universal judgment among accountants, is it?

The Witness: If you take the English accountants, who have done a great deal more work on working capital than the accountants on this side, I would say that the English practice is just as I have outlined it.

The Master: What is the American practice?

The Witness: The American practice varies. Some take the balance sheets and take the accounts payable, and the accounts receivable, and get at it that way. Others make the estimates that have been put in here. I think the estimate method, if properly applied, is the more accurate method.

The Master: Well, this company does a total volume of business in the course of a year of how much?

The Witness: In 1919, about \$340,000.

The Master: In this kind of a business, doing a volume of \$340,000, does not the amount of working capital bear a direct relation to the total volume of business, taking all these factors into consideration?

2033 The Witness: Well, Yes; I should say it had a direct relation to the amount of business done when you take all the factors into consideration.

The Master: Isn't it one-third, or one quarter or one half, or thirty per cent, or something like that?

The Witness: No, I don't think so; I don't think you can say that.

Q. On this matter of materials and supplies as of the end of 1919, do you wish to convey the impression to the Court that as of December 31, 1919, the materials and supplies account would still reflect the materials and supplies used in constructing the Douglaston Extension?

A. If I understand your question, of course it could not.

Q. It could or could not?

A. Could not, because most of the Douglaston work had been done before 1919.

The Master: Before the end of 1919?

The Witness: Yes, but the average for the year would reflect the Douglaston Extension, and that is what I am talking about.

Q. When you reject the amount of materials and supplies on hand at the end of December, 1919, you do not in any way wish to attribute that to the pendency of the Douglaston work?

A. In the first place, I have not rejected that figure, and, as a matter of fact—

Q. You have reduced it?

A. No. As a matter of fact, I allowed \$40,000, which is practically the same figure; and, in the second place, that is as of December 31, and what I am talking about is the average for the year.

It may be the same and it may not.

2034 Q. The amounts of cash on hand—did you use Exhibit A-8 with respect to the amounts of cash?

A. I had Exhibit A-8 before me when I made the estimate.

Q. Why, in 1913, with Defendants' Exhibit A-8 showing 18,493.85 on hand, did you put down as cash required only \$9,000?

A. What year did you use?

Q. 1913.

A. Well, I will have to say again that the figures that I used are average figures for a year. December 31, 1913, shows in round figures \$18,500 in cash on hand. At the end of 1912 it was \$6,300 in round figures. The cash on hand ordinarily would not be alone working capital, it would be cash for the payment of interest and dividends, and that is accumulated after it is earned, not before, so that the cash on hand on any balance sheet reflects not alone the cash on hand for working capital or for construction work alone, but the cash on hand for various other purposes for which it is not necessary to provide working capital.

Q. Did you in any way ascertain what the average cash on hand was during 1913?

A. No.

Q. How did you get your average, as you call it?

A. Well, I placed before me all the figures shown on the balance sheet, the amount of money year by year, to which I applied in this case a percentage of 5, and then also figures showing the amount of construction work done in this year, and from those figures I reached the figures which I gave to Mr. Teele and which you have doubtless had before you, that is, the cash figures for year to year.

2035 Q. Well, the cash figure for 1913 was \$18,493.85. The cash figure for the following year was \$17,313.36; and the following year it was \$30,678.95?

A. What year \$30,000?

Q. 1915. How did you get your figures of \$9,000 and \$10,000 for those years?

A. Why don't you read some of the figures where they are below the allowance I made, as well as the ones that are above?

Q. I haven't yet found any.

A. Have you looked these all through?

Q. I hope I have.

A. And you haven't found any?

The Master: In 1912 Mr. Maltbie says only \$6,300.

Q. As of the year, the end of the year 1912.

A. Yes, that is what you were talking about.

Q. I am asking as of 1913 and 1914, how you get \$9,000 and \$10,000, how you figure an average?

A. Because I thought with all of these figures before me, the facts to which you have referred before me, that that was the reasonable amount for the average for the year.

Q. Take 1915, the amount shown by the defendants' exhibit is \$30,678?

A. Yes.

Q. And the figure at the end of the preceding year was \$17,000 plus; and at the end of the succeeding year it was practically \$17,000. Yet, in some way you average it to get \$10,000?

A. And at the end of 1917 it was \$14,000. Coming down to the end of 1913, it was \$13,300; in 1919 it jumps to \$41,000. Then doesn't that show you that these figures taken by themselves
2036 cannot be an evidence of the amount of cash reasonably needed for working capital alone?

Q. But you did not average it?

A. Oh, no, I do not believe in averaging.

Q. You have entirely left out the item of Liberty Bonds held in lieu of cash.

A. I have left out Liberty Bonds.

Mr. Chambers: Of course you left it out.

The Witness: Yes, purposely.

Mr. Chambers: Your Honor is not going to allow any return on Liberty Bonds, are you?

The Master: I don't know.

Q. After you had set down these three figures, what you call materials and supplies, and what you call operating expenses advanced, and such cash as you allowed this company, in the fourth column of your working papers you added to those together?

A. I did.

Q. And then in the fifth column you put down some other figure?

A. Yes. That in the fifth column is the figure I allowed, which is equal to or more than the figures to which you have referred in the fourth column.

Q. What did you add to the total?

A. Well, as I say, as I said at the beginning, I went through these figures and then rounded them off.

Q. What additional element did you consider in increasing in some years, and not increasing in others, the amount which you show in the fourth column?

A. Nothing specially.

2037 Q. What investigation, if any, did you personally make as to the method of reading meters, the rendering of bills?

A. I personally made no investigation. The facts were supplied to me.

Q. By whom?

A. Mr. Cohen, and some of the facts in the record.

Q. What amount of time did you assume or compute to elapse between the reading of the meters and the rendering of bills?

A. Two or three days, but that would be all covered in any event, whether that figure is wrong or not, it would be all covered by the comparison of the monthly bills with the accounts receivable for gas sold. There is a cost check there.

Q. What time did you compute as elapsing between the furnishing of the gas by the company and the payment thereof by the consumer?

A. As I stated, the monthly bill would be from 15 to 20 days on gas by the company and the consumer's payment thereof?

Q. What time did you figure elapses between the furnishing of gas by the company and the consumers payment therefor?

A. Well, the gas furnished the first day right after the meter was read before payment was made, would be furnished 45 to 50 days, and gas furnished the last day just before the meter is read would be furnished from 15 to 20 days, varying times.

Q. Well, you did not make any calculation from the bills to ascertain the accuracy of that 15 or 20 day period?

A. No, I made it from a far better figure, that is a figure on the total accounts receivable with the month's sales.

2038 The Master: You stated in answer to the question I put to you before, Mr. Maltbie, that it was not fair to take the \$17,000, for instance of receivables for gas furnished because it included a profit. Suppose it did not include a profit?

The Witness: Well, I also mentioned the reserve fund which they set up, which did not need to be set up in advance.

The Master: Well, suppose as a fact that the price at which gas is sold, namely, \$1.00 in Flushing, is no more than it cost them to make the gas, why am I not on safe ground in taking the \$17,000 as a basis for working capital?

The Witness: You mean without including taxes or reserve? You would have to exclude those, because they are not provided for.

The Master: Without including reserve?

The Witness: Or taxes.

The Master: You were talking about 3 cents per thousand for replacement.

The Witness: I think they set up 3 cents, yes, or whatever is the amount. Well, I think comparing that figure with the relative figure that I have used, if anything it is a little less than the figures that I have used. Operating expenses advanced, you see, amounted to \$20,000 in my figure, which would be comparable with \$17,000. I have not made that comparison until this moment.

The Master: You don't bring that \$13,000 in at all?

The Witness: No, because I have disregarded upon the other side their rentals for appliances paid in advance, which should
2039 be deducted from the working capital, because they have so much money upon which they do not have to pay any return, they get it in advance at the time when they have to pay operating expenses, and that ought to be deducted. One thing offsets the other.

By Mr. Ransom:

Q. Well, where in your calculations of working capital have you made any provision for the increased cost of materials and supplies?

A. What do you mean?

Q. Well, you recognize that materials and supplies used in gas making have substantially increased in cost during this period?

A. Oh, certainly. That is in operating expenses advanced, partially, and partially in materials and supplies, which have gone up from 15—materials and supplies have gone up from \$15,000 in 1916 to \$40,000 in 1919. Part of that is—well, I should say a large part of that is due to the increase in the price of material.

The Master: How much of that \$40,000 is coal, about \$20,000?

The Witness: About \$14,000 or \$13,000 is coal.

The Master: Coal?

The Witness: Yes.

The Master: Well, that is—

The Witness: You see, they have an unusually large amount that year for pipes and specials.

The Master: How much for oil?

The Witness: Oil is about \$8,000.

The Master: \$13,000 worth of coal is not very much to carry, is it?

2040 The Witness: I do not think it is under the conditions; no; I do not think it is high.

The Master: Rather low, isn't it?

The Witness: I think if anything it is a little low.

Q. Now, you have allowed for 1918 materials and supplies, \$35,000; 1919, \$40,000, and 1920, \$35,000, materials and supplies?

A. That is right.

Q. How much did the output increase in that time, or the sales?

A. The sales in 1918 were 326,000 M cubic feet; 1919, 336,000 M cubic feet, 10,000 M in two years. I do not know what they would be in 1920.

Q. Assuming that these computations are correct——

A. (Interrupting.) That is 3 per cent increase.

Q. In 1909 your allowance for working capital was 20.5 cents per thousand cubic feet of gas sold; in 1914 it was 17 cents per thousand cubic feet of gas sold, and in 1919 22.3 cents per thousand cubic feet of gas sold.

The Master: How many thousand cubic feet of gas were sold in 1919?

Mr. Ransom: 336,000 M cubic feet.

The Master: 336,000?

The Witness: Yes. I presume your figures are correct. I have not worked them out.

Q. Do you think that covers the increase in the cost of labor and materials during those years?

A. I think it covers the increased cost of labor and material and all other factors, some of which go to offset it. I should expect the differences of that sort per thousand cubic feet of gas sold, in view of what I know of the facts.

Q. Will you produce your working papers on your working capital?

A. I have my working papers here.

Q. I would like to see them. I would like to have that sheet that gives your items for each of the years?

A. Do you want to put it in evidence?

Q. I have called for its production. I wish to see it.

A. Yes (handing paper).

Mr. Chambers: Now, did you invoke the rule, that if he——

The Master: Just hand it to the other side.

Mr. Chambers: Well, that puts it in evidence, according to his rule.

The Witness: There is no one here who has seen that before, your Honor. I don't know whether that is the one you are asking for or not.

Q. Is this the one you showed Mr. Teele?

A. Oh, I showed him that among others.

Q. Well, where is the one you showed him?

A. I showed him that among others.

Q. Where is the one that you gave him to copy as giving your figures?

A. I read off the figures to him and he took them down; he did not copy them. I read the figures.

Q. From this?

A. Yes, from that.

Mr. Ransom: The trouble is, if I put this in evidence I would want to photograph it.

2042 The Witness: Well, you can photograph it. I think it is a good thing to have in evidence.

Mr. Ransom: I offer it in evidence.

Paper marked Complainant's Exhibit No. 105.

Q. You have known that various gas companies in this State, in this region, have had very great difficulty in getting coal lately?

A. Why, I have general knowledge that they have had difficulty in getting coal.

Q. Have you heard of any gas companies in this State suspending within the past week or so because of inability to get coal?

A. I know of none.

Q. You have not heard of the suspension of the Genesee Company last week on account of inability to obtain coal at all?

A. I have not.

Q. Have you any working papers showing how you arrived at the amount of \$10,000 for organization, legal and general expenses; that is organization and legal expenses, I take it, up to 1904, that was, wasn't it?

A. Why, I have got nothing but one paper.

The Master: Are we all through with working capital?

Mr. Ransom: I think so, for the present.

The Master: Well, do you expect to put in anything else?

Mr. Ransom: I may have to ask just three or four questions in rebuttal.

The Master: All right.

The Witness: I haven't any details of that figure, if that is what you want to know.

2043 Q. Did you make any computation of any kind to determine what had been or in your opinion ought to have been the expenses of this character incurred prior to 1904?

A. I made no computation, no.

Q. In arriving at this item of \$10,000, did you apply a percentage?

A. I did not.

Q. How did you get that figure, if at all?

A. I got it all right.

Q. Well, how?

The Master: I hope you didn't get it where you got that land figure that I quizzed you about—out of the air.

Mr. Ransom: I did not want to ask him that.

A. This is an item which has been included in a number of cases in which I have testified, and I have been over a number of companies——

Q. You mean this \$10,000 figure?

A. No, this item.

Q. This kind of an item?

A. This heading; these kinds of expenses. And I have recently been over about, I should say, a dozen companies up the State of organization, legal and general expenses connected with the formation of the company.

The Master: The lawyers up-State do not charge the fees we do down here. It doesn't cost them as much to live up there.

The Witness: Well, this company might go up-State and get organized, and it would not cost as much.

The Master: I stand by the union down here. I can't help that.

2044 The Witness: And with these facts in mind, and with other general experiences in allowances in other cases, why I fixed the figure at \$10,000.

Q. Is this account based on a computation you made in the case of those companies up the State?

A. No. As I say, I had before me their actual costs, no one of which by the way exceeded \$5,000.

Q. You mean you found, on a personal examination of their books certain items charged to this?

A. No; sworn investigations that had been made of their books.

Q. Made by whom?

A. By the agents of the Public Service Commission of the Second District, with the help of the companies.

Q. That is, you found certain items charged to these accounts of their books?

A. No, found certain items charged to various accounts which had been gathered together.

Q. Which you gathered together and attributed to this?

A. Not which I gathered together; which had been gathered together.

Q. Which you gathered together and attributed to this?

A. Not which I gathered together; which had been gathered together.

Q. By whom?

A. By the representatives of the Public Service Commission of the Second District and the companies' officials.

Q. It was not anything that you yourself did?

A. No.

2045 Q. Or anything which you directed or had anything to do with?

A. Except in two companies, those items were checked by the accountant representing me and found to be substantially correct.

Q. Did the Public Service Commission for the Second District ca

these items which you thought they found in some books, organization, legal and general expenses?

Mr. Chambers: I object to that as being quite outside of the matters in litigation here.

The Master: Overruled; I think it is proper on cross examination.

Mr. Chambers: What the Public Service Commission of the Second District did?

The Master: I think it is proper cross examination on what this witness has testified to.

Mr. Chambers: Exception.

A. Those were the items in those accounts covering these similar headings.

Q. That isn't an answer to the question. Do they put this title on the items which you think they found in the books which you think they examined?

Mr. Chambers: Same objection, being speculative and vague and indefinite.

The Master: Same ruling.

Mr. Chambers: Exception.

Mr. Cummings: Ask him a clear question and maybe he can answer.

The Master: Mr. Cummings, the rule of addressing the Master and not counsel on the other side applies to you as well as to other counsel.

2046 Mr. Cummings: I ask the Master to have him do it.

The Master: The Master declines.

The Witness: The terms in the report of the representatives of the Public Service Commission did not use exactly the same words that I have used here.

Q. What did they use?

A. But they are practically synonymous.

Mr. Ransom: I move to strike out "practically synonymous."

A. As I recall, it was "organization and general expenses."

Q. Have you the reports here from which you took that information?

A. I have not.

Q. In what form were those reports?

A. They were reports of the Division of Capitalization of the Commission, as I recall it.

Q. That is the same bureau of the up-State Commission corresponding to Dr. Weber's bureau of the Commission for the first District?

A. They are organized somewhat differently. They have a separate division of capitalization, separate from the accounts and statistics division.

Q. On the basis of what you found in those reports, you made up a figure for the New York & Queens Company?

A. What I found in those reports and all the other things to which I have referred, I made up a figure of \$10,000.

Q. You cannot give any details or subdivisions of it?

A. No, I made no details.

Q. Did you personally make any investigation of the books 2047 to determine whether expenses were incurred during the period subsequent to August 1st, 1904, on account of organization and legal or similar expenses?

A. I am not entirely sure what you mean by similar expenses but I went over the balance sheets and went over the account and went over with Mr. Hine what items he had included there. I am not sure but those items relating to the Douglaston Extension might be called general expenses, but Mr. Hine allowed them in his figures, so of course I did not put them in here. They certainly would not be organization expenses, but they could be general and legal.

Q. The balance sheets show the captions of accounts?

A. They show certain captions of accounts.

Q. You did not go to the accounts?

A. No, I did not go to the accounts.

Q. Now, you testified on page 2331 of the mimeograph record to an amount of \$5,000 interest and taxes during construction up to 1904. Upon what basis did you arrive at this figure?

A. Yes, up to 1915.

Recess until 4 o'clock P. M.

Afternoon Session.

MILO R. MALTBIE resumed the stand.

Cross-examination.

By Mr. Ransom (continued):

Q. When we adjourned I had asked you with respect to the amount of \$5,000 interest and taxes during construction, 2048 which you said, "I have estimated amounts up to 1904 to \$5,000." Have you any working papers showing your computations, if you made any as to this item?

A. Yes.

Q. Is this estimate based upon a percentage?

A. Well, I made some figures, before arriving at the final figure of \$5,000, involving percentage figures.

Q. Is it based upon a percentage?

A. Involves percentage figures.

Q. Well, what percentage is this estimate based on?

A. I found from the tables placed in evidence by Mr. Hine that—

Q. Upon what percentage?

A. If you will let me finish I will show you.

Mr. Tobin: Let him answer.

The Master: Go ahead, Mr. Maltbie.

The Witness: Upon the tables prepared by Mr. Hine and placed in evidence I found that the tangible property up to 1904 of this company had cost upwards of \$300,000. To that figure I applied a ratio of $1\frac{1}{4}$ per cent, which I arrived at in this way: I took an average construction period of six months for this property and an interest rate at 6 per cent, which upon the whole amount, for one-half the time—that is, one-half of six months, or three months—would give a percentage of $1\frac{1}{4}$. $1\frac{1}{4}$ per cent of \$300,000 is \$3,750. Then from that I reached a conclusion that the maximum amount would be \$5,000, including such taxes as should be included on the taxable property of the company.

Q. You figured that as of 1904 the plant, works and distributing system of this company would be built, rebuilt, or reproduced in six months?

A. No, I estimated the average construction of this company's property up to 1904, as such a plant would be developed ordinarily, not having the exact facts for what happened or what they paid for interest during construction prior to 1904, and that the average construction period would be six months.

Q. You never built a gas plant?

A. No.

Q. Prior to 1904 or at any other time?

A. No.

Q. You never had anything to do with the construction of a gas plant?

A. Not directly. A great many of the expenditures, of course, for additions and betterments were made while I was a member of the Public Service Commission.

Q. You never had any responsibility as an executive or other official of a company for construction of properties of this kind?

A. No.

Q. You never had anything to do with the financing of an enterprise of this kind?

A. Not of a gas company.

Q. You never operated it?

A. No.

Q. Where did you get that $1\frac{1}{4}$ per cent?

A. One-half of six months is three months, or a quarter of the year, and $\frac{1}{4}$ of 6 per cent is $1\frac{1}{4}$ per cent.

Q. It is?

A. Yes. $1\frac{1}{2}$ per cent. I will correct myself. That would make the figure, instead of \$3,750, \$4,500, or \$500 less than I allowed.

2050 Q. Where did you get the figure for the taxable property as of 1904 as \$300,000?

A. From the exhibits which Mr. Hine placed in evidence.

Q. Which ones?

A. Table 20, which is Defendant's Exhibit A-105, shows the cost of fixed capital as of August 1st, 1904, was \$285,406.

The Master: You said something over \$300,000?

The Witness: Something less than \$300,000. Oh, any allowance for working capital would bring it up to about \$300,000.

Q. That should be allowed there?

A. No, I put it down. I do not think interest during construction should be allowed on working capital, but you wanted to know what I had in my notes.

Q. How about land?

A. No, the Minnesota rate case decision says not.

Q. You would not allow either interest or taxes during construction upon any part of the land?

A. Well, that depends on how——

The Master: I am not taking your testimony, Mr. Maltbie, as a lawyer; nor am I taking your expert testimony as to the law.

Mr. Cummings: We are not offering it for that.

The Master: But Mr. Maltbie is apparently testifying to what his construction of the law is, and I do not want it; and it has no place in this record.

Mr. Tobin: If the Master please, he simply referred to that case, that is all.

2051 The Master: I shall strike out his reference to the Minnesota rate decision.

Mr. Cummings: He may be familiar with it.

The Master: I do not care how familiar Mr. Maltbie is with the decisions of the Court. No witness is competent to testify here as to what the law is, as to what rules shall be applicable to the facts in this case. I have taken Mr. Maltbie's opinion, as to the points with reference to which he has testified, as a layman, a business man, an accountant.

Mr. Ransom: He may be a layman, but I do not see how you can call him the other things.

Mr. Tobin: But, if the Master please, if you will go back and examine the record you will find that you practically accepted the testimony of Colonel Miller and allowed it to stand as it was attempted to be introduced, and when Mr. Chambers——

The Master: As to Colonel Miller's construction of any statute?

Mr. Tobin: Whether it was the construction of a statute or his own opinion, and when Mr. Chambers attempted to dissect it you said the record was sufficient in itself.

The Master: To be perfectly frank with you, Mr. Tobin, I do not know what you are talking about.

Mr. Tobin: I will give you the record and that will show for itself.

Q. This figure of Mr. Hine, reached in the method which he testified to on direct examination, did not include land?

2052 A. No. If you are going to include land at cost, interest during construction should be allowed on land, and the figure is large enough to include that, to compute $1\frac{1}{2}$ per cent interest on it as well.

Q. Have you ever calculated just how much property of gas

corporations you appraised in rate cases while you were a Public Service Commissioner?

A. Have I what?

Q. Calculated just how much property of gas corporations you did appraise in rate cases while you were a Public Service Commissioner?

A. I may have.

Mr. Neumann: That is objected to on the ground it is incompetent, irrelevant and immaterial, indefinite and vague. What do you mean by property—value or amount or size of it?

The Master: Objection overruled.

Mr. Neumann: Exception.

The Witness: I may have.

Q. There was the property of the Queensboro Gas & Electric Company?

A. Yes, sir; I think two appraisals were made of that property.

Q. That is the company operating in the Borough of Queens.

A. Yes, part of its property is in the Borough of Queens.

Q. And the Brooklyn Borough Gas Company?

A. Yes, there were two cases as to the Brooklyn Borough Gas Company, and the stock and bond issue case.

Q. And the Kings County Lighting Company?

A. Yes.

2053 Q. Were there any other cases in which you made an appraisal of the property of gas corporations within the City of New York while you were a Public Service Commissioner?

A. I think a rough approximation was made of the value of the property of the Bronx Gas & Electric Company, but I do not think—of the gas property. Yes, of the gas property of the Bronx Gas & Electric Company as well as its electric properties; but I do not think that was ever made a definite figure and used in a report or decision of the Public Service Commission. There were three or four other cases that I had just before April 1, 1915. I do not recall whether any final figures were made in those cases or not.

Q. Those were cases in which you had heard some of the testimony before your term of office expired?

A. Correct.

Q. The decisions of the Commission in those cases were made subsequently?

A. Yes, sir.

Q. You are familiar with the form in which the opinions of the Commission are published, the so-called Public Service Commission reports for the First District, Volume 2 thereof?

A. Oh, yes, in a general way.

Q. Does that set forth your opinion in the matter of the Queensboro Gas & Electric Company?

A. Oh, yes.

Mr. Ransom: I offer it in evidence.

Mr. Cummings: What is the purpose of that?

Mr. Neumann: Let us see it.

The Master: Let me see it (examines book). Much of this is immaterial to this issue, is it not?

2054 Mr. Ransom: Some of it is immaterial to this issue.

Mr. Cummings: All immaterial.

Mr. Ransom: But it covers a great many points.

The Master: Bearing upon the witness' testimony?

Mr. Ransom: Bearing upon what the witness testifies to now and as compared with what he did in an official capacity.

The Master: There are particular sections of this opinion that you say are in conflict or bear upon this?

Mr. Ransom: Well, his ruling there with respect to the necessity of ascertaining the cost to reproduce, where the records do not go back of 1902; the amount which he allowed for preliminary and development expenses as compared with his present figure. For example, in that case he allowed \$263,000 for preliminary and development expenses.

Mr. Neumann: One moment, if the Court please. I object to the reading into the record of part of his decision.

Mr. Ransom: That is, out of a total—

Mr. Neumann: One moment, please, I am addressing the Court.

Mr. Ransom: So am I.

Mr. Neumann: Well, I have the floor, I believe. The proper way of impeaching a witness, and that is the evident intent of it, would be to confront him with that. That decision is based upon certain evidence; whether that evidence is the same as that in
2055 this case no one knows. It may be predicated upon entirely different facts.

The Master: I am inclined to agree with Mr. Neumann about that. In the Consolidated case I remember that you pointed out statements made by Mr. Maltbie.

Mr. Ransom: Or I can go over those things step by step, but I think we are entitled to—the claim has been made here that this witness in some way became an expert by listening to what other people testified to, some of whom may have been qualified, in cases before him, and on the results which he reached in those cases. The claim was made in the Consolidated case, when I pursued the other method, that I was merely taking out fragments and was not presenting the whole. I am now proposing to put before you his whole finding, his whole basis, the way he did it then as distinguished from the way in which, as a layman, he is now advising your Honor it should be done.

The Master: I am afraid I cannot take it.

Mr. Ransom: Exception. May I have it marked for identification?

Marked Complainant's Exhibit No. 108 for Identification.

Q The Queens Borough Gas & Electric Company, the figure which you reached as representing the present value of its property—

The Master: As of what year?

Mr. Ransom: As of June 23, 1911.

Q. (continued.) Was \$860,000, was it not?

Mr. Neumann: Are you finished, Judge?

I object to it on the ground it is incompetent, irrelevant
2056 and immaterial, and not the proper way of proving it.

The Master: Overruled.

Mr. Neumann: Exception.

A. If you will let me refer to the opinion I will tell you. I do
not carry these figures in my mind.

Q. I will call your attention to page 576 of the opinion, in which
you say: "After carefully considering all the above factors the Com-
mission has determined"——

Mr. Neumann: One moment.

Mr. Ransom: Let me finish my question.

Mr. Neumann: I ask the Master to direct the stenographer not to
take anything further; it is another way of getting into the record
what the Master has ruled out.

The Master: No.

Mr. Neumann: Part of the opinion.

The Master: I did not rule out parts of the opinion. I ruled out
the whole of it.

Mr. Neumann: Exception.

Q. (Continuing.) "The Commission has determined that the
Queens Borough Company is entitled to earn a fair return on the
following amounts: Gas plant, \$860,000." Is that right?

Mr. Cummings: You ruled out the whole opinion. Are you going
to let him read in every part of it?

The Master: I am going to let him read any part that will bear
upon this witness' testimony and would make it useful in examining
his witness. I do not quite understand, Mr. Maltbie, why you have
to read the whole opinion.

57 The Witness: The date—I have not got to read the whole
opinion, but he gave a date.

Q. The date of the adoption of the opinion.

A. That is not necessarily the date when the property was valued.

Q. Wasn't that necessarily the date as of which you and the
Commission valued it?

A. It was the date of the action, not the date of the value of the
property.

Q. State the date as to which you now think you may have
valued it?

A. The date of that value is December 31st, 1910.

The Master: Is the value correctly stated there by Mr. Ransom?

The Witness: The amount he gave is correct.

Q. And you use the present tense on June 23, 1911, with respect
to that amount, did you not, in fixing a rate for the future?

A. Well, I think so, but I would have to look at this.

Q. I just called your attention to the page on which that appears.

A. I think that is correct.

Q. May I have the opinion?

A. (Witness hands counsel.)

Q. And I might let you have this copy (handing paper). This company was selling, as found by you or as stated by you, 177,200,000 cubic feet of gas a year, calling your attention to the figures on page 581 of this official report—pages 580 and 581—"It is estimated that for the current year the consumption"—

A. You see I have not the same paging as yours. Where is that?

2058 Q. For 1911, 177,200 M (indicating).

A. That is an estimate for the year, Mr. Ransom.

Q. Well, what was the actual amount for 1910?

Mr. Cummings: I object to it, your Honor, upon the ground it is all incompetent—Mr. Maltbie's ideas and theories back ten or twelve or fifteen years ago. You have probably changed some of your ideas during the last ten years, have you not?

The Witness: Yes, I guess so.

A. I do not see that it gives the figure for 1910 in this opinion. It is probably given in the prior opinion in that case.

The Master: Wasn't the fixed capital account designed by your Commission to avoid this constant valuation and re-valuation of plants, so that you might know precisely what was invested in the plant on which the return should be had?

The Witness: Well, it was designed to show the original cost of the property that was acquired after the adoption of the uniform system of accounts.

Q. In this Queens Borough case one of the issues was the value of the property used in the gas business, was it not?

A. Yes.

Q. You found that it was impossible in that case to determine even the approximate cost of the property used in the gas business, did you not?

Mr. Neumann: That is objected to on the ground it is incompetent, irrelevant and immaterial.

Q. Don't you remember?

2059 Mr. Neumann: And upon the further ground that at that time there was more than one Commissioner. There were at least five at that time.

The Master: How does that come in here?

Mr. Ransom: I am just leading up to what he did there as the basis of rate making.

Mr. Cummings: It is immaterial.

A. I think we did make some investigation.

The Master: I do not think we want that.

Mr. Cummings: It is immaterial, your Honor.

The Master: I do not care what Mr. Maltbie did as Commissioner as to fixing a rate.

Mr. Neumann: He was one of five commissioners.

The Master: I am permitting you to cross-examine this witness for the purpose of showing, as you did in the Consolidated case, that he reached a conclusion that a manufacturing and distributing gas plant represented a certain amount per thousand cubic feet. I will also let you cross-examine and point out that he has expressed views contrary to what he says here as to going value, depreciation or any other particular item. I am not going to get into this record what he did as a judge or what his opinion might have been.

Q. Did you not state on one page of the pamphlet copy of your opinion in this case that it was impossible to state even an approximate figure as to the cost of the physical property?

Mr. Neumann: That is objected to upon the same grounds as before stated.

The Master: That is sustained.

Mr. Ransom: Exception.

2060 Q. Did you not state that "the present stockholders are in no way to blame for the inadequacy of the old record and the fact is stated here principally to show that the accounting records as of 1908 are all limited to determining the value of the property"?

Mr. Neumann: That is objected to on the same grounds as before stated.

The Master: Sustained.

Mr. Ransom: Exception.

Q. Did you not also state that it was evident from the above facts that the accounts of the company do not show the fair value of the property at the present time?

Mr. Neumann: It is objected to upon the same grounds as last stated.

The Master: Sustained.

Mr. Ransom: Exception.

Mr. Neumann: If the Court please, I cannot quite see how this line of inquiry impeaches this witness on what he testified to on direct.

The Master: I have sustained your objection.

Q. When you found that you could not ascertain from the records the entire cost of the physical property you took a cost of reproduction new basis, did you not?

Mr. Neumann: That is objected to upon the same grounds as last stated.

The Master: Sustained.

Mr. Ransom: Exception.

Q. In this case, Mr. Maltbie, you have allowed what you call—I will give you the exact expression—"organization, legal and general expenses," \$10,000?

2061 Mr. Neumann: That is objected to unless counsel confines it to the instant case and not another case.

The Master: He is talking about the case at bar now.

A: That is correct.

Q: In the case of the Queens Borough Gas & Electric Company, was it not your judgment that the allowance for preliminary and development expenses should be \$263,000 out of a total of \$860,000?

A: Will you let me see the decision?

Mr. Neumann: That is objected to on the ground it is immaterial, irrelevant and incompetent. The evidence in that case might have been entirely different from the evidence in this case. There is no criterion or basis of comparison.

The Master: We will find out whether there is or not.

A: What was that statement?

The Master: You allowed about \$200,000 for development——

Mr. Ransom: \$263,000.

The Master: Out of a total of \$800,000 put into the property originally?

The Witness: Well, the page which Mr. Ransom hands me——

Q: I did not hand you any particular page.

A: Well, you handed me an opinion in that case open to a certain page, which is Mr. Connetts estimate.

Q: What did you say you allowed?

The Master: What did you find?

A: For preliminary and development in the Gas Department 110,000.

2062 Q: And for contractors' profit, engineering and administration and incidental overhead \$136,345 in the gas department?

A: And contingencies.

Q: That is contractors' profit?

The Master: How big a plant was that, Mr. Maltbie?

The Witness: Do you mean how large an output?

The Master: Yes.

The Witness: Well, the estimate for 1917 was——

Mr. Ransom (interrupting): 1911.

The Witness: The estimate for 1911 was about 177,000 M cubic feet.

The Master: And we have got 336,000 Ms here.

Mr. Ransom: 336,000.

The Master: And you reached the conclusion, after examining into the situation in that case, that it took about \$240,000 odd to get the business going?

The Witness: No; that preliminary and development covers going concern value, which I have put in a separate estimate here entirely.

The Master: How much of that was going concern value?

The Witness: I do not think there was a separate separation of that item.

The Master: How much have you allowed altogether in this case for all of those items?

The Witness: It is hard to make that comparison.

The Master: Well, it is not over \$15,000 or \$20,000, is it?

2063 The Witness: This is on the basis of an estimate of cost of the property, what the company reasonably did pay or would have paid if we had the records of cost, what we would have found they paid.

The Master: Isn't that what you concluded in the Queens case?

The Witness: No, that is a reproduction cost estimate, and that includes—that was before the decision in the Kings County Lighting case.

The Master: I don't care about decisions. I am trying to find out what it would cost a gas company producing 336,000 M cubic feet of gas, to sell it, for its development and necessary expenses to get operating—legal and other expenses, organization. You have given me a figure which seems absurdly low, compared with the figure that you found in a judicial proceeding as it were, as commissioner.

The Witness: Yes.

Mr. Ransom: In the same territory?

The Witness: Same territory, and of course—

Mr. Ransom (interrupting): And a company only about half the size.

The Witness: The figures are not comparable, because the preliminary and development includes deficits in early years and does not offset against those in that case any excesses in later years.

The Master: Is there any reason why this company then is not justified in asking me to find upon the basis that you found in that case, that their business being twice as large, they are entitled
2064 to about a half a million dollars for that alone?

The Witness: Yes, I think there is.

The Master: What is it?

The Witness: Because if you are going to take the deficits in earlier years in the question of going values, you ought to take the excesses in later years, and I specifically stated in my testimony that I have not undertaken to determine in this case whether there were any deficits in earlier years. You will remember that I left that out, and stated that I left it out.

The Master: But that is only a part of this quarter of a million dollars, this going value?

The Witness: That would be a very large part.

The Master: How large a part?

The Witness: I don't know, I could not tell how much it was, without going over my working papers in that case, how much of that \$110,000 was allowed for that item.

The Master: Yes, but \$240,000 odd for the two items—

Mr. Ransom (interrupting): It is \$136,345 for contractors' profit, administration and contingencies, and he says \$110,000 for preliminary and development. I am unable to find from the record in this case or in these other cases concerning which I have interrogated

him that his allowance for preliminary and development did include going value or did include deficit.

The Witness: As to the \$136,000, there isn't a single item in that case that is covered in the figures that I have given with the possible exception of administration. Contractors' profit and engineering has been covered by Mr. Hine's figures; contingencies and incidentals are covered by his figures.

The Master: Prior to 1904?

The Witness: All the way through. The only item in that \$136,000 that is covered by any figures I have presented is that of administration expense.

The Master: In arriving at the value of a plant which is being used for the manufacture and distribution of gas, I have got to take into consideration all of those items, haven't I?

The Witness: You certainly have.

The Master: I don't mean as a matter of law; I mean in order to determine the value.

The Witness: You certainly have.

The Master: I have got to have in mind that they have got preliminary expenses of various kinds, that there are legal expenses in the course of organization.

The Witness: That is right.

The Master: There are organization expenses?

The Witness: That is right.

The Master: There are deficiencies at the beginning of operation?

The Witness: Yes, likely to be.

The Master: Likely to be; that there is more or less waste, I suppose, in getting the thing in shape and going?

The Witness: Well, that I included in the operating expenses.

The Master: Now, all of those things go into the ultimate value of a plant, don't they?

2066 The Witness: They do.

The Master: Now, when you come to figuring all those things out, didn't you find that the figures ran very much alike in various plants out in that section of Queens and Brooklyn?

The Witness: Well, very much alike as to the——

The Master (interrupting): Ultimate results

The Witness: Engineering charges.

The Master: No, but as to the ultimate result of a thousand cubic feet of gas sold.

The Witness: I would not wish to say that.

Q. Didn't you use substantially the same percentages in the Queens Borough case and the Kings County Lighting case and the Brooklyn Borough case?

A. Percentages for what?

Q. Those various kinds of overhead charges?

A. Much the same, as I recall, as to the percentages, but that is only a part of the cost.

Q. But as a matter of fact this figure of \$136,345, these overhead charges as you call them, was based upon general knowledge and experience, rather than upon the particular company, was it not?

A. No; general knowledge was used, but it always had reference to the particular company and the particular company's experience.

Q. Well, do you recall saying this, "There are certain expenses connected with every undertaking which are not represented by physical property, but which must be incurred before the plant is operated. These relate to the initial promotion of the scheme and organization of the company. Investors must be interested; lawyers and engineers must be consulted and franchises and permits must be secured. Interest and taxes during the period of construction must be paid, and if there are no earnings, they must be included as a part of the cost of the undertaking. There are also other expenses connected with the experimental and trial operation of machinery and the adjustment of various parts and so forth which antedate operation. It will be recalled that the estimates already given include simply \$263,000 for engineering, supervision, contingencies, incidentals and contractors' profits."

A. Those are estimates of Mr. Connette.

Q. (Continuing reading:) "Thus no further allowance need be made under this head or these items, but it is sometimes customary to group all under one title, 'overhead charges.' Ordinarily one would expect that the company itself would have data upon which to base an estimate of a reasonable allowance for these items. In this case the company has produced no such data, and as the early records are missing, an estimate must be based upon general knowledge and experience."

A. Yes.

By the Master:

Q. Did you find there was any general knowledge or experience covering the matter?

A. Well—

Q. (Interrupting.) Or is there now?

A. Of course there is, always is.

Q. Isn't there a very definite knowledge on the part of people interested in the gas business as to what a gas plant is worth that will produce a certain quantity of gas and that is in good operating condition?

2068 A. On the basis of so much per thousand?

Q. Yes.

A. No, there is nothing but a rough "curbstone" opinion.

Q. How long has that obtained, that rough "curbstone" opinion?

A. Oh, various figures are used by various persons, and have been for some time.

Q. Well, what figures?

A. Well, they range all the way, depending on the man who makes the testimate and depending upon the plant, from two or a little over two dollars a thousand, up to, some men use, ten dollars a thousand.

Q. Have you ever studied the question?

A. Yes.

Q. What do you say is nearer the figure?

A. I say that you cannot estimate the value of a plant that way. Sometimes if you do you strike it very closely, and sometimes you miss it pretty far.

Q. Why?

A. Because there are circumstances which, merely going and looking at a plant the first time and without inventorying it, taking into account the precise conditions that exist, that mislead you, you don't know about them.

Q. What circumstances would there be, so far as the consumer is concerned, that changes the value of a plant as to him, when all that he knows about it is that he is getting a thousand cubic feet of gas? What difference does it make whether it is red brick or yellow brick, or whether the plant covers one block or two blocks, or whether it is one type of machine or another type of machine, if what it does is to produce a thousand cubic feet of gas?

2069 Mr. Neumann: That is objected to on the ground it is incompetent, irrelevant, immaterial. I think it is a matter of common knowledge that water plants and gas plants have different valuations.

The Master: Water plants?

Mr. Neumann: Water gas and coal gas plants.

The Master: Certainly, I know that.

Mr. Chambers: I think it is objectionable and argumentative, and that the Master has a lot of questions in one.

The Witness: Well, there are a great many factors that make plants with approximately the same output have quite different values.

Q. To the consumer?

A. Yes. Value for rate making, any way, and I am talking about that.

Q. How can it be any more or less valuable to the consumer? I can understand, Mr. Maltbie, how the plant may be one that can be more economically operated than another, and in that sense is more valuable than another, and I can understand how there might be factors in a situation that would change the value of a plant for purposes other than the consumer's interest in the situation, but for the life of me I can't understand how, so far as the consumer is concerned, he is interested in whether that plant is worth, from any standpoint of valuation, \$10 a thousand or \$1 a thousand, if, through the years, the average ordinary operating plant can produce it at \$4. What does he care what it costs? Isn't it worth \$4 to the consumer or \$5, whatever the figure may be?

2070 A. No, I do not think so. Just take the question, for instance, of whether you have a water gas plant without any coal gas adjunct at all.

Q. Yes.

A. That will give you one figure for plant capacity alone, plant output alone. Now, if you have a coal gas plant capable of handling, we will say, two-thirds of the output, in case you need it and yet you have a water gas plant capable practically of handling 80 per cent,

your plant value or cost per unit of gas sold, will be very much higher in the latter case than it will in the former case, and whereas you may have only \$2 or \$2.50 or \$3 a thousand in the one case, your plant, if you have got a coal gas plant there too, will increase the cost very much more. I say it may. It all depends upon the conditions that exist.

By Mr. Ransom:

Q. Now, with respect to this plant of the Queensboro Gas & Electric Company, selling 177,200,000 cubic feet a year——

The Master: What kind of a plant is it, coal or water gas?

Mr. Ransom: Water gas.

Q. Do you recall saying this: "As to interest and taxes a very close estimate can be made, not more than eighteen months would be required to construct the plant, according to the engineers? This does not mean that the whole undertaking with all its lines was or would be built in eighteen months from the very beginning to the end, but that the equated period would not exceed a year and a half. In this case the equated period of construction would not exceed eighteen months?"

A. Yes. I have changed my opinion very much about interest and taxes during construction of the average plant since I wrote those opinions. There isn't any question but what we allowed a great deal more than was reasonably necessary and proper in those cases.

The Master: Well, since then, of course, you have got into the employ of public authorities.

The Witness: No, but we changed it in the later opinions for the Commission.

Q. You allowed \$30,000 for working capital for the gas operations of this company?

A. I think that was about the figure.

Q. You determined that as of that time 8 per cent was a fair rate of return on the value of property used in the gas business?

Mr. Neumann: That is objected to.

Mr. Chambers: I object to that as being incompetent, irrelevant and immaterial. We have not interrogated Mr. Maltbie at all on the rate of return in this case.

The Master: Yes, I will sustain the objection.

Mr. Ransom: Exception. I think in connection with all the theories he has given on the subject of depreciation and reserve and the like, the question of rate of return becomes important, because as he himself said in this opinion, it is——

The Master: Don't take this. (Discussion off the record.)

The Master: Was that \$800,000 to which Judge Ransom referred the value that you found for the entire manufacturing and distributing plant, or just for the manufacturing part?

The Witness: No, that was the entire plant, gas department of the company.

2072 Q. And that included \$110,000 of preliminary and development expenses and \$136,345 for these other overhead charges?

A. It did.

Q. Now, in this case you also determined that 15 per cent was a reasonable quantity of gas unaccounted for, did you not?

Mr. Neumann: That is objected to on the ground it is immaterial.

The Master: Objection sustained.

Mr. Ransom: I offer to show by this witness that in passing upon the question of gas unaccounted for in this Borough of Queens case, that he determined that 15 per cent was a reasonable allowance.

The Master: I will sustain the objection.

Mr. Ransom: Exception.

Mr. Chambers: Oh, that is an engineering question.

Mr. Ransom: I now offer in evidence——

The Master: Let us see if we have it clear that this Queensboro plant about which we have been talking is a plant in a territory quite similar to the plant of the New York & Queens Company.

The Witness: No, I should say it was in a territory quite different from the New York & Queens Gas Company.

The Master: In what respect?

The Witness: This supplies, so far as the property particularly in the City of New York is concerned, this Far Rockaway section, and that is entirely different from the north part of Queens or the interior of Queens.

2073 The Master: You mean by that it would cost more to put up a plant to produce 117,000 M's there than in Flushing?

The Witness: I should say so, yes.

The Master: Why?

The Witness: Because of the conditions of the soil, and furthermore the conditions of sale. This company has its maximum sale in the summertime, a very variable sale, with a great increase on hot days, a big jump, big variation, and they have got to have a plant for handling the maximum day.

By the Master:

Q. I don't quite understand your point. Does it cost any more to put up a plant in the Rockaways because the maximum load is in the summertime?

A. You have to have more plant. I don't know as it would cost any more to put in a structure, of course that would depend upon the foundations and where it is placed there. I would not say whether the structures are located out there in such a place that the foundations would be entirely different from the foundations of the buildings in the New York & Queens Gas Company, but what I had in mind principally was that they would have to have more plant in relation to output.

Q. Why, because their peak is in the summertime instead of the wintertime?

A. And it jumps very greatly because of the influx on hot days of people into Far Rockaway.

Q. What do you mean—what was the maximum value of this Far Rockaway plant?

A. I do not recall. I do not think it is in that opinion.

2074 Q. Well, it does not cost any more to lay mains, does it?

A. Well, they have got a sandy soil out there.

Q. Only in part of it?

A. What?

Q. Only in part of it, along the beach?

A. A good part of that section.

Q. You would not say there was any sandy soil on Far Rockaway?

A. I would not say there was any sandy soil on Far Rockaway?

Q. On Far Rockaway, in the main part of Far Rockaway?

A. Yes, as I recall it, it is all sand. I was through there. They don't go but a little distance below the surface before they strike sand.

Q. I thought it was pretty good soil out there?

A. I am not speaking from absolute memory, but that is my recollection.

Mr. Ransom: Doesn't it cost less to lay mains in sandy soil?

The Witness: Not if you have to reinforce the walls to keep them from caving in.

Q. Well, is it your experience that you have to reinforce the walls in sand?

A. Shoring the pit, you will in some cases.

Q. How often?

A. It depends upon the sand.

Q. Well, generally speaking, do you say they have got to sheath pile or reinforce the trench in sand?

A. I don't know, generally speaking.

Q. Have you ever operated in sand or seen buildings go up in sand?

A. I have seen the mains laid out there.

2075 Q. Have you seen construction work going on in sand, or foundations for buildings in it, ordinary trenches?

A. I do not recall any now. I may have seen them.

Q. Would you be surprised to know that in perhaps a hundred buildings that have gone up right in the sand dunes of Sea Gate and Coney Island they never thought of such a thing as sheathing a trench, and that the sand holds absolutely firmer than any other soil you ever saw?

A. I would be surprised at that, yes. You get a little water in the sand, and it is an entirely different matter. Dry sand—

Q. I am talking about the whole locality there?

A. Yes, and you get a little below the surface in Far Rockaway and you will get water.

Q. I was startled to find that in sand you could dig down into the

sand and it will hold absolutely firm, and they never think of sheath piling, or anything else?

A. Some kinds of sands will.

Mr. Chambers: You better talk to some engineers on that thing.

The Master: I have seen it.

Mr. Chambers: I have not seen it.

The Master: You don't have any sand up in Albany?

Mr. Chambers: All our barge canalers can tell you.

The Master: They don't have any beach sand up there; we are talking about this beach sand.

Mr. Chambers: Well, it is sand.

2076 The Witness: If it is sharp sand without round corners, look out for it, if water gets in it ever.

By Mr. Ransom:

Q. Did you refer to that in this Queensboro case?

A. I don't know whether I have or not.

Q. Did you in any way indicate that the cost of a plant was greater because their maximum demand came in the summertime instead of in the winter months?

A. I do not recall whether there was anything in that opinion about that.

Q. Now, you wrote the opinion adopted by the Commission in Case 1273, involving rates of the Kings County Lighting Company, did you not?

A. I wrote an opinion in that case.

Q. The opinion adopted October 26, 1911?

A. I think so.

Q. You assigned as the total value of that company's property, as of December 31st, 1910, \$2,477,579, did you not?

A. If you will let me see the opinion, I will tell you.

The Master: Does the record show how big a plant that was?

Mr. Ransom: I am getting to that next.

The Witness: Read the question.

(The question was read by the stenographer.)

Q. And the company at that time was selling 580,728,000 cubic feet of gas a year?

A. That is correct.

The Master: Where was that property?

The Witness: That is down in the Bensonhurst-Fort Hamilton section.

2077 The Master: And what kind of a plant is that, water or coal gas?

The Witness: I think that is all water gas.

Mr. Ransom: I believe that is correct. Now, in this—

The Master: Wait a minute.

By the Master:

Q. What is the character of that territory? Have you any sand property there?

A. Only in parts of it, and I do not know whether they have any mains in that part; that is the southeast part of it.

Q. What is the southeast part, down near Coney Island?

A. Yes, off towards Coney Island, where they had the golf links down there; I do not think there are any mains laid in that property. The rest of it is pretty good soil.

Q. So that so far as the laying of mains is concerned, it compares with this New York & Queens, does it?

A. I should say so, more than the Queensboro.

Q. So far as the service conditions are concerned, it compares with the New York & Queens, that is a winter colony there, you haven't the summer crowd there?

A. Not to any great extent.

Q. So that this Kings County water gas plant compares more nearly to the New York & Queens than the Queensboro plant does?

A. I should say so, yes.

Q. Is it fair to draw a comparison as to value between those two plants, the New York & Queens and this Kings County?

A. Well, I would not care to express an opinion upon that
278 without going over the property itself, or at least an inventory of the property, in each case.

By Mr. Ransom:

Q. This figure which you have given of \$2,477,579, that is the value after the deduction of \$415,198 of depreciation?

A. For accrued depreciation, that is correct.

Q. In that figure of \$2,477,579, you allowed for contractor's profits, engineering, administration, contingencies and incidental overhead, \$341,149?

A. That is correct. I may say, your Honor, just glancing at one thing here, in response to your question, the land was included in the case of the Kings County Lighting Company at \$650,000, which is far in excess of the amount of land for present value of the land in the New York & Queens case. They had some valuable water front property there.

Q. That figure which I have just given for these various overhead charges is 21.8 per cent upon what you call the net cost of tangible property other than land, is it not?

A. I have not figured it out.

Q. You state in your resume of appraisal as of December 31, 1910, net cost of tangible property other than land, \$1,561,628?

A. Yes.

Q. To that you add overhead, the various items I have mentioned, amounting to \$341,149, which is 21.8 per cent, if I figure correctly, upon your net cost of tangible property, making a total of cost of \$1,902,000—

A. Read it all, "Total of cost to reproduce new."

Q. Yes. (Continuing) \$1,902,077?

A. That is correct.

079 Q. In addition to that you allow \$260,000 for what you call preliminary and development expenses?

A. Yes.

The Master: That is all excluding land?

Mr. Ransom: Thus far, yes.

The Master: Now, anything else added, excluding land?

Mr. Ransom: Then he adds \$80,000 of working capital, did you not?

The Master: I don't want that.

Mr. Ransom: That is all.

The Master: The contingencies, excluding land, you figured to reproduce new, less depreciation, those three figures of \$1,561,000, \$341,000 and \$260,000, didn't you?

The Witness: Yes, exclusive of accrued depreciation to land. Have you got working capital there?

The Master: No.

The Witness: Yes, that is correct.

The Master: With depreciation off?

The Witness: No, that is with no depreciation taken off.

The Master: That is with no depreciation. Now, you depreciated those figures how much?

The Witness: \$415,198.

The Master: Those three figures?

The Witness: Well, we did not depreciate preliminary and development.

The Master: What did you depreciate?

The Witness: We depreciated the land and the——

The Master: The plant I mean how much?

The Witness: I did not mean land. We depreciated the tangible property, including the net cost of the overhead.

2080 The Master: Yes. How much?

The Witness: \$415,000. So you reached the conclusion that to reproduce that plant in 1909 or 1910, whenever it was, after deducting the depreciation, its value was \$1,747,000, exclusive of land?

Mr. Neumann: No, if the Master pleases, I must object to that upon the ground that it does not presuppose that there were four other commissioners sitting there, that that was the conclusion of five commissioners.

The Master: The question I asked the witness was whether it was his judgment.

Mr. Neumann: Well, he was sitting there with four other commissioners at that time, there were five commissioners.

The Master: And he wrote the opinion.

Mr. Ransom: Yes, and they adopted it.

Mr. Neumann: That may be, but that was the judgment of the five of them.

Mr. Ransom: And they adopted his opinion.

Mr. Neumann: That is all true, but I want the record to show that there were five commissioners at that time.

Mr. Ransom: Let us hope.

Mr. Neumann: In addition to that, it should also be objected to on the ground that there is nothing now to show that the evidence in that case might not be quite contrary to what the evidence was in the present and extant case.

The Master: I am not interested in that. What I am interested in is this, that Mr. Maltbie has made a study of the values of plants. He had peculiar opportunity for determining the value of plants. 2081 He was not blindly following the testimony of witnesses, he was analyzing it, he was studying it and reaching a conclusion after hearing everything that he could get. He was not bound by the ordinary rules of evidence as a Commissioner, were you, Mr. Maltbie?

The Witness: No.

The Master: You had a right to get your information wherever you could get it.

The Witness: But you must have it all in the record.

The Master: Yes, but when you got information from any source you put it in your record to make it complete, wouldn't you?

The Witness: Not always, but you must have it in the record if you used it.

The Master: Now, Mr. Maltbie, with the peculiar opportunities he had, has reached a conclusion as to the value of various plants at various places, and I believe that testimony is properly brought out on cross examination as bearing upon the testimony he has given in this case.

Mr. Neumann: Well, as a matter of fact, the commission found, if your Honor wants to take it on the physical value as they found it, \$2 in the Brooklyn Borough.

Mr. Ransom: We will come to that in a moment. Now, in this—

The Witness: There is a question you asked, unanswered.

(The question referred to was read by the stenographer.)

The Witness: Exclusive of land and working capital, that figure is correct.

2082 The Master: That is for some five million cubic feet?

The Witness: For 587,000 M cubic feet. That includes, as I called attention to a moment ago, the preliminary and development, which includes the early deficits in the early years.

The Master: Well, I understood you to say that that must be taken into account in arriving at the value of the plant.

The Witness: Yes, and it may be offset by excesses above a fair rate of return in later years, and that would depend upon whether it was or not, in each case, as it came along.

By Mr. Ransom:

Q. Now, this item of \$341,000 is made up to include 10 per cent for general contractor's profit and 15 per cent for engineering, incidentals, etc., is it not?

A. I think it includes those items. Those were figures made by Mr. Connette, and he included, generally speaking, 10 per cent for contractor's profits. He was the engineer who made the appraisal for the Commission.

Q. And 15 per cent for engineering, incidentals, etc.?

A. And contingencies, I think.

Q. And you said that it is improper to allow that 15 per cent?

A. I do, when you are talking costs, because your cost has got your contingencies and incidentals in it already, everything is in it. In this case again the only item which I have included in my figures which is in that \$341,000 odd, is the administration expenses, which is a very small item.

2083 Q. In this Kings County Lighting case again, you figured that the equated period of construction for the purpose of figuring interest and taxes during construction, was eighteen months, subject to this change of view which you expressed?

A. As a matter of fact I think it was eighteen months, and that was based upon the opinion of the engineer for the Commission at that time. As I have said, that was a high rate at that time, and it was in my opinion, before I left the Commission, very much too high.

Q. But in this opinion in the Kings County Lighting case, you stated to similar effect that you did in the Queensboro case?

A. Yes. That was a decision made about the same time as the Queensboro case.

Q. And that the pure average was not correct, and the equated period of construction would be about eighteen months?

A. I think we said eighteen months in those early cases.

Q. And do you remember what rate of return you fixed in that case?

Mr. Neumann: Objected to.

The Master: Objection sustained.

Mr. Ransom: Exception.

Q. Do you claim that you did include going value in your preliminary and development in the Kings County Lighting case?

A. To the extent of including the items to which you referred in the Queens Borough case. The decision in the Kings County Lighting Company case was practically the same as the Queensboro, made along the same lines, including the same items. To that extent it does include going concern value, or going value.

2084 Q. Well, does it include the cost of developing the business during the preliminary period?

A. To a certain extent, yes.

Q. To what extent?

A. Well, to the extent that it would be necessary to get the thing going, get the thing started.

Q. Up to the point where the business would be the exact equivalent of that of the existing plant?

A. Oh, no, no sir. We never put that in.

The Master: Who is "we."

The Witness: The Commission.

Mr. Ransom: I do not think there is any use of discussing the action of the Appellate Division on that point with this witness. I merely call your Honor's attention to the action of the Appellate Division on that point.

The Witness: Particularly as to depreciation, I suppose?

Mr. Neumann: Why not call the Master's attention to the Court of Appeals, 210 N. Y., the same case?

Mr. Ransom: I already have done that

Q. Now, the third case that we have referred to was the Brooklyn Borough Gas Company, to whose property you assigned a total value of \$1,320,000?

A. If you will let me have the opinion, I will confirm that.

Mr. Ransom: In the copy I have here of this opinion, it is incomplete. Three-quarters of the opinion is not here in this bound edition.

Mr. Neumann: Shall I send over and get one of our copies for you?

Mr. Ransom: You might do that.

Mr. Neumann: Which one do you want?

2085 Mr. Ransom: I want Volume 4 of the reports of the Commission.

Mr. Neumann: Volume 4.

Mr. Ransom: Yes.

Q. Now, Balch vs. Brooklyn Borough, which was the first Brooklyn Borough case reported in Vol. 2 of the reports of decisions of the Commission, opinion adopted August 18, 1911, you reached the conclusion that the net cost of the property other than land was \$916,154?

A. Will you let me have the opinion?

Q. As of December 31, 1910?

A. The statement just above it is, "The estimates of Mr. Connette for all of the physical property, used and unused, from December 31st, 1910, were as follows," and the figure is, "Net Cost of Property other than Land, \$916,154."

Q. Well, was that not also adopted by you?

A. In that case we made no valuation of the property. We found an amount below which the value could not go, and as on that amount the company was not earning a rate of return in excess of a fair amount, the complaint was dismissed.

The Master: What do you mean by that?

Mr. Ransom: May I just follow that up?

Q. On page 639 you stated, "The amount reached above (practically \$1,100,000) may be called, for lack of a better term, the minimum present value of the property upon which the company is entitled to a fair return. The Commission has not decided that it is the fair value of the property. Possibly it is less than the fair value. But if the company has not and probably will not during 1911 under efficient management earned a return upon this 2086 which will warrant a reduction of the rate, there is certainly no need to proceed further and attempt to determine the fair value. It should be noted that the minimum value of \$1,135,000 has been obtained by refusing to allow the claim of the company for a higher appraisal of mains and services, the value of paving

for which the company has never paid and the plant not in use in 1910 nor to be put in use during 1911." Now, in reaching that \$1,135,000 as the net cost of physical property other than land, you added \$202,201 for the contractor's profit, engineering, administration, contingency and incidentals, did you not?

A. No. Those are Mr. Connette's figures, which were not adopted and found as the fair value of the property in that case.

The Master: Where did you get your minimum sum?

The Witness: Well, from the figures which Mr. Connette gave, with certain changes.

Q. Then your version is that Mr. Connette reached a present value of physical property of \$994,476, is that correct?

A. As I recall it, that is correct.

Q. And that is what appears on page 638?

A. Yes.

Q. Then you said to this sum there should be added, "Preliminary and development, \$180,000"?

A. And working capital, \$40,000.

Q. Is that correct?

A. Yes, that is what it states there.

Q. And that is what you stated there?

A. That is what it states there, and I wrote the opinion.

The Master: Wasn't that your opinion?

2087 The Witness: Well, as I said a moment ago, all we were trying to find in that case was whether on a minimum amount they got a fair return, and if they did we did not have to find a fair value in that case.

The Master: I understand that, but that was a water gas plant, wasn't it?

The Witness: Yes, that was a water gas plant.

The Master: And that was located down in Coney Island of Brooklyn Borough, wasn't it?

The Witness: Yes, it supplies Coney Island.

Mr. Ransom: Coney Island and the Sheepshead Bay district.

Mr. Neumann: Manhattan Beach also.

By the Master:

Q. And the amount of gas put out by that company then was how much?

A. In 1910 the cubic feet of gas sold is 213,817 M.

Q. 213,817 M's, and you reached the conclusion that the plant under no circumstances would be worth less than how much?

A. \$1,135,000.

Q. And that included mains?

A. That included everything.

Q. So that in your judgment, from what you saw of that plan and what you could learn about that plant, under no circumstances was it worth less than that anyhow?

- A. That is correct; on the basis given, of including the preliminary and development in the way that I have already described.
- 2088 Q. In the sum of \$180,000?
- A. That is correct.

By Mr. Ransom:

Q. And contractor's profit, engineering, administration, contingencies and incidentals in the sum of \$202,201?

A. No, I cannot say that both items were included, because you add all of those together and it gives you a certain amount. There are certain items that are later deducted.

Q. Well, those deductions are \$88,000 for gas works not in use, and \$50,000 for paying not paid for by the company?

A. That is correct.

Q. And after adding to represent the additions to the new plant, \$60,000.

A. Yes.

The Master: The net result was the figures that you gave me before as the minimum value?

The Witness: Yes.

Q. You said, in fact, on page 637, with respect to preliminary and development expenses, "This subject is also generally discussed in the opinion in the Queensboro case. Following the principles there outlined, it is believed a deduction of \$180,000 is sufficient to cover all preliminary and development expenses, including interest and taxes during construction."

A. Yes, the same principle would apply in all of these cases up to the Kings County Lighting case, and this case to which you refer was before the decision of the Appellate Division and Court of Appeals in the Kings County Lighting case.

Q. Did you determine that in that case 11.2 per cent was a reasonable percentage of gas unaccounted for?

2089 Mr. Neumann: Objected to on the ground it is immaterial.

The Master: Objection sustained.

Mr. Ransom: Exception.

The Master: There isn't any evidence offered by the defendants in this case contradicting the testimony offered by the complainant as to what the reasonable amount of unaccounted for would be in this case.

Mr. Neumann: Well, if the Court please, I must except to that. We offered the actual experience of this company. We offered the statistical records showing that in the year 1919 the increase over the year 1918 was 44 per cent.

The Master: I understand that. Percentages used in that way don't mean anything to me.

Mr. Neuman: That may be, but it may somewhere.

The Master: No, it ought not to fool anybody.

Mr. Neumann: It is not intended to fool anybody, it is intended to be the actual operation of this company.

Mr. Chambers: That is what we did in the Consolidated Gas case.

Mr. Neumann: The peculiarity about all of these cases, if the Court please, is that here are people losing their product all the time, and nothing to show that they are making an effort to trace those losses.

Mr. Ransom: Perhaps we can get through on this Brooklyn Borough case.

Q. Have you any figures of the second Brooklyn Borough case with you? In Volume 4, page 346, of the reports of decisions of the Commission for the First District, there is set forth your opinion in the Brooklyn Borough case as to the 31st Ward of Brooklyn, on page 346. Does it not appear from that page that a fair value of the property upon which you held that the company was entitled to a fair return at that time was \$1,320,000?

A. I said a moment ago from what I have here I can't check up that figure, it doesn't agree with the figure that I have.

Q. And that the cubic feet of gas sold for 1912 was 273,253,000 cubic feet?

A. I haven't any figures showing the sales of the company in those years.

The Master: Can you take up something else while you are waiting for that volume?

Mr. Ransom: I think that is all.

Mr. Neumann: It will be right over here.

The Master: Have you anything else to ask Mr. Maltbie while we are waiting?

Mr. Chambers: Yes.

Mr. Neumann: Here is the volume (handing Mr. Ransom).

Q. In the year 1912, as appears from page 346 to which I have just directed your attention, cubic feet of gas sold by the company was 273,253,000 cubic feet; is that correct?

A. In 1912?

Q. Yes.

A. Yes.

Q. The amount of allowance for working capital was \$60,000?

A. That is correct.

Q. The amount allowed for preliminary and development expenses was \$180,000?

A. That is correct.

2091 Q. The reproduction cost of the property, aside from land, was \$1,144,043?

A. That is correct.

The Master: Is that after depreciation or before depreciation?

The Witness: That is before depreciation.

Q. The value of which you found was \$107,500?

A. That is correct.

Q. The net cost of plant, mains and other physical property as of December 31st, 1912, was found by you to be \$1,008,292?

A. Well, those were the figures of the engineers to the Public Service Commission.

Q. Were not those the figures which you adopted?

A. Which in the main were used. I think there were some changes in them. They were not very material.

By the Master:

Q. Do I understand, Mr. Maltbie, that the Commission has in its employ engineers capable of valuing property of this kind?

A. At the present time?

Q. Yes.

Mr. Chambers: I object on the ground that Mr. Maltbie is not there. Why not ask the Commission?

The Master: He knows the personnel of the Commission.

Mr. Neumann: I must object to that on the ground it is incompetent, irrelevant and immaterial, so far as this particular case is concerned.

The Master: Objection overruled.

Mr. Neumann: The valuation here is put in by the Attorney-General.

2092 The Master: Objection overruled.

Mr. Neumann: As has been stated by some of our engineers, co-operating with their force.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. I know they have very competent electrical engineers there. Whether there is any one there competent to put a final figure upon the plans I would not wish to say.

Q. It is rather remarkable that a public service commission should not have in its employ engineers capable of giving me expert valuations of gas plants, is it not?

Mr. Neumann: That is objected to on the ground it is incompetent, irrelevant, immaterial and purely argumentative.

The Master: I think it is very material.

Mr. Chambers: I object to it on the ground that the Commission is not on trial today.

The Master: No, but I think it is very significant that the defendants do not produce a practical gas engineer, a man who has had to put up and operate plants and knows what it costs from actual experience, rather than Commissioner Maltbie, whose information and knowledge comes really second-hand from the expert knowledge of other people.

Mr. Neumann: I assume there are two ways of obtaining knowledge—one by your own experience, and that by the experience of others.

The Master: Yes, and I think the one who has his own experience directly—his evidence would be much more satisfactory than that of the man who gets it second-hand.

Mr. Neumann: I think the man who has judged both sides and

heard both sides testify is just as competent as a man who goes over and looks at a plant.

The Master: I think he is competent, but I say not quite so satisfactory.

Mr. Neumann: I must except to the Master's characterization.

Mr. Ransom: It is the first time in jurisprudence I ever heard the principle laid down by counsel or sustained by a judicial officer presiding that a person became qualified to testify as an expert by hearing other people testify.

Mr. Cummings: By study.

The Witness: I think Mr. Hine did the principal part of that valuation work, and Mr. Hine has testified in this valuation case.

By Mr. Ransom:

Q. To this figure of \$1,008,292 which you described as the net cost of the physical property, there was added \$166,609 for contractor's profits, engineering, administration, contingencies and the like; is that not correct—being column 3 of the table, and the opinion stated on page 337, Column 3, "General engineering, supervision, administration, contingencies, incidentals and a general contract's profit where customary and necessary. These figures added to net cost give the estimated cost to reproduce the existing plant in a new condition."

A. That is correct.

Q. Then after deducting depreciation you reached a figure of \$954,984?

A. For the tangible property, exclusive of plant.

Q. According to page 347 of this opinion the operating expenses of the company for the year 1912, exclusive of taxes, were \$123,571.89, were they not?

2094 A. Will you read that?

Q. Operating expenses for 1912, exclusive of taxes, \$123,571.89?

A. Exclusive of taxes, depreciation and uncollectible bills.

Q. That figure is correct?

A. Yes.

Q. And the taxes were \$14,931.65?

A. That is correct.

Mr. Ransom: That is all.

Redirect examination.

By Mr. Chambers:

Q. Mr. Maltbie, taking the cases in the order in which you were interrogated by counsel for the complainant, who was on the Commission at the time you handled that Queens Borough Gas & Electric Company case?

Mr. Ransom: Objected to as immaterial.

The Master: I think it is immaterial. I will let you show that there were three or four other commissioners.

Mr. Ransom: I will admit it?

Mr. Chambers: Why not give their names?

The Master: I do not care anything about it.

Mr. Chambers: That they were eminent men, lawyers, and so on.

The Master: I do not care anything about it.

Mr. Ransom: I will admit there were four others. This witness says that these matters were referred to him and he wrote the opinion.

Mr. Chambers: Your Honor rules that out?

The Master: Yes.

Mr. Chambers: Exception.

2095 Q. Were there other commissioners?

A. There were.

Q. Was that opinion in that case adopted by the members of the Commission?

A. It was.

Q. That was an informal proceeding, was it not, Mr. Maltbie?

Mr. Ransom: Objected to.

The Master: What do you mean by informal?

Mr. Chambers: That is what I want to know.

Mr. Ransom: The facts speak for themselves.

A. It was.

Q. What do you mean by an informal proceeding?

Mr. Ransom: Objected to as immaterial.

The Master: I will take it.

Mr. Ransom: Exception.

A. The company in that case agreed to accept the finding of the commission before such finding was made, regardless of what the finding was, and put the rate into effect for one year. As a result we did not go through the formality of taking formal proof and cross examination and everything of that sort. A great deal of it was done by conference and discussion around the table. Those hearings and conferences were always open to the public.

The Master: What case was that?

Mr. Chambers: The Queens Borough.

The Witness: That was the first Queens Borough case.

By Mr. Ransom:

Q. Was there not some testimony taken in that case?

2096 A. Some testimony was taken, and then this arrangement was made and, as I said, the formality of the proceedings and putting in evidence was dispensed with.

Q. An order was made, was it not?

A. Oh, yes, an order was made.

Mr. Chambers: Just a minute now.

By the Master:

Q. I get the impression, Mr. Maltbie, that you and the representatives of the gas company in a more informal manner than would ordinarily be found in a judicial proceeding tried to work together to get a fair value?

A. That is correct.

Q. And the result which has been spread upon the record was due to this co-operative effort to get at some value that would be agreeable all around; is that correct?

A. Well, I do not know whether they would say that it was agreeable all around, but they did agree to accept the order of the Commission before they knew what it was and before it was entered, and before we began to go into it in detail, and put the rate in effect for one year, and they did it.

Q. I suppose the limitation of the rate for one year was due to the fact that operating costs might change after a year?

A. Partially, yes.

Q. Not that the value of the property would change?

A. Not that the value of the property would change, but conditions might. They did not want to be bound indefinitely in the future.

Q. In other words, your idea was that once you fixed the valuation of the property that order remained stationary, and
2097 that the cost of operation and the expenses of producing the article and distributing it might vary and fluctuate?

A. Yes, unless some mistake had been made or some experience was found which would lead us to change our opinion as to any element of value.

By Mr. Chambers:

Q. When was that company organized; is there anything in there to show it?

The Master: I do not think that is important. How is that important?

Mr. Ransom: I object to it as immaterial.

Mr. Neumann: If your Honor please, that is quite important on the question of going value. Counsel was allowed to interrogate this witness quite fully on the question of going value.

Mr. Ransom: I will consent to have the entire opinion go in evidence.

The Master: Yes, I will allow it.

A. Well, the Queens Borough Electric Light & Power Company was incorporated on February 28, 1898. Upon May 29, 1902, the Queens Borough Gas & Electric Company was incorporated, and that was the company which was doing business at the time this case was on.

Q. Did you allow anything for going value in that case, Mr. Maltbie?

Mr. Ransom: Objected to. The opinion speaks for itself. It shows what he did.

The Master: I will allow it.

Mr. Ransom: Exception.

A. Not as a separate item. It was included in preliminary and development.

Q. As you testified a few minutes ago?

A. As I have already testified.

2098 Q. What allowance did you make in that case for working capital, if any?

A. For the gas department \$30,000.

The Master: Hasn't he already testified to that?

Mr. Chambers: No, I do not think he has.

The Witness: No.

Q. In the Kings County case the Commission was still composed of members other than yourself?

A. Yes, as long as I was on the Commission—that is, for the period covering all of these cases—there were five members of the Public Service Commission for the First District.

Q. What did you allow for going value in that case, do you remember?

A. In which case?

Q. The Kings County, which is a little farther over in that volume.

A. That is in another volume.

Q. Could you tell from this Appellate Division decision (indicating)? There it is.

A. I allowed \$80,000 for working capital in the Kings County Lighting case.

By the Master:

Q. Of course, that would have to be very much more today?

A. It would be more today, yes.

Q. Much more?

A. How much?

Q. Much, I say?

A. Well, I should say appreciably more.

Q. Probably twice as much?

A. No, I would hardly say twice as much.

2099 Q. The value of materials has gone up twice, has it not?

A. Yes.

Q. Labor has gone up pretty nearly twice, has it not?

A. Yes, but the amount of cash that you would need to carry would not have gone up.

By Mr. Chambers:

Q. Do you remember what happened on the question of going value in the Court of Appeals, Mr. Maltbie, in that case?

Mr. Ransom: Objected to.

The Master: Objection sustained.

Mr. Chambers: Why?

The Master: You know just as well as I do why. Do not ask those questions.

Mr. Neumann: In this case, if the Court pleases, this witness testified that they had changed their rulings after the Court of Appeals decision, and these questions were directed as to what the Court of Appeals' decision was and what the change was.

The Master: I sustained the objection.

Q. Did you in regard to going value, Mr. Maltbie, or did the Commission, change its rulings because of anything said by the Court of Appeals in that case?

Mr. Ransom: Objected to as incompetent.

Q. (Continued:) Or what effect thereafter did the decision of the Court of Appeals have?

Mr. Ransom: Objected to as incompetent.

The Master: Objection sustained. I will let you ask Mr. Maltbie whether after the decision of the Court of Appeals in the Kings County case he figured going value in any other way than he had theretofore.

Mr. Neumann: Whether the Commission did.

2100 The Master: No, I do not want what the Commission did. I want his individual judgment and opinion. He is swearing to it.

Mr. Ransom: I object to that on the ground that the decision would be the best evidence and there is not any other decision.

The Master: No, what I mean is whether he arrived at any different opinion as an expert accountant, I will put it that way, as to what ought to be done about going value. Did the Court of Appeals opinion change your judgment at all in reference to it?

Mr. Chambers: No, I did not ask him that.

The Master: Or was your action thereafter in submission to the Court of Appeals decision?

Mr. Ransom: Objected to as incompetent, not within the scope of either the direct or cross examination, the witness not being qualified, and it is not a matter on which the opinion of the witness should be reflected in decisions, if at all.

The Master: I will overrule that objection. Let us get this clear.

The Witness: The Court of Appeals decision did not change my opinion as to how these things should be dealt with. I am of the same opinion now on that point that I was at that time.

By the Master:

Q. But your action as Commissioner was controlled by the opinion of the Court of Appeals?

A. Of course.

Q. That is what I want to make clear.

A. And there is this to be said about it—that the rule laid down

by the Court of Appeals as to going concern value has a great deal to be said in favor of it, as a fair method of determining an amount to be allowed. But it has not changed my opinion as to the method.

Q. That may be all right, but I am taking your testimony as an expert opinion as to the method of arriving at the value of the plant. Whatever the rules of law may be, that is something that the Courts will have to consider, having in mind the sworn testimony of a witness whom I have ruled was expert enough to testify as to how the plant should be valued, to get its value.

A. It has not changed my opinion upon it at all. As a matter of submitting the full question to the two bodies, I have made attempts to apply the Court of Appeals ruling to cases that I have had, just as I have made attempts to apply the Des Moines case to cases I have had.

Q. Well, you were bound to.

A. Certainly.

Q. After I had gotten all the evidence I can get and the opinion of experts as to what constitutes the value, and how you get at it—after all, I have got to be guided by the decision of the Courts in reaching a conclusion myself as to what the value is?

A. That is what I meant when I have tried to say a few times that making it conform to the decisions of the Courts in certain cases, I find so and so. Because, while the opinion of the United States Supreme Court is not exactly the same as the Court of Appeals in the Kings County Lighting case, yet that is one of the methods of arriving at an element to be taken into account, and I have submitted facts along those lines to the two bodies. Just as in the Minneapolis case, I made an investigation to determine whether there were any such losses in earlier years which had not been offset by excess of fair return in later years.

By Mr. Chambers:

Q. In these cases that counsel has asked you about did you allow something for depreciation?

A. We always deducted accrued depreciation in all of those cases.

The Master: From reproduction cost.

The Witness: Yes.

Mr. Chambers: That is all.

Mr. Ransom: That is all.

The Master: Are you ready to go on with Mr. Hine?

Mr. Ransom: This afternoon?

The Master: No, tomorrow?

Mr. Ransom: Yes.

Mr. Chambers: I would like to ask Mr. Maltbie one question.

The Master: Ask what you want.

Q. Mr. Maltbie, have you because you have been employed by the Attorney-General or the public authorities—has that caused you in any way to change your opinion on these various subjects?

A. Absolutely not.

Adjourned to Wednesday, June 23, 1920, at 2 P. M.

Last Complainant's Exhibit 106.

Last Defendants' Exhibit A-112.

2103

NEW YORK & QUEENS GAS COMPANY

vs.

CHARLES D. NEWTON, &c., et al.

Before Abraham S. Gilbert, Special Master.

New York, June 23, 1920.

Met pursuant to adjournment.

Present:

Mr. Ransom, Mr. Vilas and Mr. Goetz, of Counsel for Complainant;

Mr. Chambers, Mr. Tobin and Mr. Cummings, of Counsel for Defendant Newton;

Mr. Neumann, of Counsel for Defendant Lewis Nixon, Public Service Commissioner.

WILLARD F. HINE recalled.

Cross-examination.

By Mr. Ransom:

Q. Mr. Hine, at pages 2236 and 2237 you testified you had a number of men working with you under your direction on this work in connection with this case. You named four. Were there any others?

A. I think those were all that worked on this case. Some others may have done occasional work.

Q. Well, what others?

A. I do not recall any at the present time.

Q. How many of those men spent any considerable amount of time at the Flushing works?

A. Mr. Unger and Mr. Goldthwaite spent considerable time there.

Q. Any others?

2104 A. No, sir.

Q. Mr. Goldthwaite has been in court here during the trial of this case?

A. I believe he has once or twice.

Q. Mr. Unger?

A. No.

Q. What work did you instruct them to do at the Flushing works?

A. They were checking the inventories of the Flushing works.

Q. All of the four, or merely the two?

A. The two.

Q. How old is each of those four men that you mentioned?

A. Why, I am sure I don't know. I think Mr. Goldthwaite is somewhere in the neighborhood of 32 or 33; I think Mr. Unger is—I don't know.

Q. How about the other two?

A. I do not know the ages of the others, I am sure.

Q. Well, about what, have you any idea?

A. Mr. Zientz, I would say that Zientz was somewhere in the 30's, probably, and the man working with Mr. Zientz, Mr. Rode, I haven't any idea what his age is; he is a young man.

Q. How about Mr. Unger?

A. Mr. Unger I should say is about 23 or 25, I don't know.

Q. Mr. Rode you cannot give any idea?

A. I think he is around 25, or 25 to 30.

Q. What experience has any of those four had in gas engineering?

Mr. Neumann: I object on the ground it is incompetent, irrelevant and immaterial, not within the province of this witness
2105 so to testify.

The Master: I am going to allow, or I am going to permit counsel to develop and spread on the record the fact that these two engineers to whom the witness has referred are either experienced or inexperienced, as the testimony may develop. They are young men. They may be electrical engineers or something else, and I am going to get it on the record.

Mr. Neumann: The people he is speaking of now were with the Public Service Commission.

The Master: I understand, but that don't make them any more qualified than if they were strangers.

The Witness: As to Mr. Goldthwaite, I do not believe he has had any practical gas experience. His experience has been generally electrical. Mr. Zientz has had experience in the inventory of gas properties, I know that.

Q. Has he had any experience in connection with the construction or operation of gas properties?

A. Not that I know of, except as to checking construction expenditures, and checking work that was done under construction authorization with the Commission.

Q. You mean experience in connection with the checks made by some public body?

A. Made by the Public Service Commission.

Q. He is regularly employed in the Electrical Engineer's office of the Commission?

A. I believe it is that department, yes.

2106 Q. Not in the Gas Department of the Commission?

A. He was assigned to the Gas Department for some time, something over a year, at one time.

Q. In doing what?

A. In making an inventory of the gas properties.

Q. Has any one of these four men, to your knowledge, ever had anything to do with the construction or operation of a gas works, or any part of it?

A. Not to my knowledge.

Q. How many visits have you made to the Flushing works in connection with this case?

A. In connection with this case directly one.

Q. How long did you remain then?

A. I got there in the morning and left about three o'clock.

Q. What time in the morning?

A. Some time before eleven, I believe.

Q. How much before eleven?

A. I don't know the exact time; it was around eleven.

Q. And you left about three, or before?

A. Around three o'clock.

Q. When, last, had you been at the Flushing works prior to that time?

A. It had been several years before that.

Q. How many years?

A. I could not say; I do not remember.

Q. More than five?

A. No.

Q. More than three?

A. I do not remember just when it was, but I know it was not five years ago.

2107 Q. How many times would you say you had been there on these earlier occasions?

A. Four, five or six times, I cannot say, I am not sure.

Q. Can you give any idea how long you remained there any of those times?

A. No. I have gone through the plant several times, I know. As to when those were, and how long it took, I do not know.

Q. When you say you went through the plant, you mean you walked through it and looked it over generally?

A. Yes.

Q. Nothing more than that?

A. Well, I was viewing the plant, looking it over, not specifically except as to certain specific things we were interested in.

Q. Have you ever had responsibility for the output of gas of a company's system?

Mr. Tobin: Your Honor, I think the witness has previously answered this question, and I do not see any reason for repeating it.

The Master: You are breaking in while the question is being asked. I think that requires a little more definite statement.

Mr. Tobin: If the Master please, the question is surely indefinite, if nothing else.

The Master: Make it a little more definite.

Q. Well, have you ever been in charge of and responsible for the output and delivery of gas to consumers in any company?

Mr. Tobin: Now, that is objected to on the ground it is incompetent, irrelevant and immaterial. What materiality has the fact as to whether he had to deliver any output of any gas company to the consumer with reference to his valuation of its property.

2108

The Master: Overruled.

Mr. Tobin: Exception.

A. I don't know just what you would mean by that. When I was in St. Louis, and when I would be in charge of the plant on Sundays or holidays, why, I would then be responsible in the case of that plant for the gas that was sent to the holders and the condition of the holders in connection with the operation of the Station A Plant.

Q. How many plants had they in St. Louis?

A. Two manufacturing plants.

Q. Under ordinary conditions you were not in charge of either?

A. I was not in full charge of either.

Q. You never were in charge of both?

A. Except as to the output on Sundays or holidays.

Q. Then you were in charge?

A. Then I would be in charge of the A Plant, which had control over the other.

Q. You never were in charge of both—of the operations of both?

A. No, except as I have stated.

Q. On Sundays and holidays you said you had charge of the A Plant?

A. Yes, which controlled.

Mr. Tobin: If the Master please, I do not think it is fair to criss cross the witness in this manner. He has endeavored to answer the questions put by counsel, and I think counsel ought to be satisfied with the answer.

The Master: Overruled.

Mr. Tobin: Exception.

2109 Q. Well, laying aside for the moment the Laclede situation, have you anywhere else ever had charge of and been responsible for the output and delivery of gas to the consumers of a company?

A. No.

Q. What was your salary at Laclede?

Mr. Neumann: I object to that, your Honor, as incompetent, irrelevant and immaterial.

The Master: Overruled.

Mr. Neumann: Exception.

The Witness: I do not recall. I believe, when I left, somewhere around \$125 or \$150; thereabouts.

Q. That is a month?

A. Per month.

Mr. Neumann: Do you claim the salary has anything to do with a person's qualifications?

The Master: It indicates somewhat.

Mr. Neumann: Many high-class men cannot make money either, while other high-grade men—

The Master (interrupting): Yes, I know that, and some high-

class men like those sometimes found on the Federal bench are very inadequately paid, and yet the salaries paid by a private enterprise to an employee indicates somewhat the relative value of the work being done.

Mr. Neumann: Exception.

Q. The first time you were at Laedle your salary was \$60 a month, was it not?

A. I started with that, yes.

Q. Do you wish to say now that it ever was more than \$125 a month?

2116 A. No, I do not know.

Mr. Neumann: Objected to as incompetent, irrelevant and immaterial.

The Witness: I know that I was offered more than that to stay.

Q. How much more, do you say?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial.

A. Double.

Mr. Neumann: Exception.

Q. Have you ever had charge of the maintenance and management of the distributing system of a gas company?

A. No.

Q. Now, your Table 11, Defendants' Exhibit A-97, what is that designed to show?

A. The cost of the apparatus and piping, that is of the gas works apparatus and piping, as of December 31, 1919, the depreciation of the same items and the cost less depreciation.

Q. With respect to each of those items of property in connection with your calculation of depreciation and of cost less depreciation, you estimated what you call the life in years of each such item of property, did you not?

A. The useful life, yes.

Q. And you also calculated and set down what you call the age in years of each such item of property?

A. Yes.

Q. And you gave to Mr. Alrich what you called the life in years and the age in years of each such item?

A. I did.

Q. Have you your working papers on those items in court?

A. I have.

2111 Q. Will you produce them so that you can refer to them?

A. Yes.

Q. Does that correctly set forth those ages and estimated lives as you gave them to Mr. Alrich (handing paper)?

A. (Examining paper.)

Q. I will take your working papers on that.

A. They are not arranged in that way. The working papers do not show the age.

Q. They do not show age?

A. No, sir; they show it in rates per year, and you have got to convert it.

Q. What did you call——

A. (Interrupting.) They show age, I beg your pardon; they do not show the estimated life in years; they show it in rate, per cent.

Q. They show a fraction, or rate per cent?

A. A rate per cent.

Q. Well, how did you call off the figures to Mr. Alrich which you gave as representing it?

A. Well, if it would be five per cent per year it would be twenty years.

The Master: He just converted it as he went along.

Q. Perhaps we best check that?

A. It will take just a few moments more. (Checking paper.) It seems to be correct.

Q. The assumed life in years and the age years set down by you and used in making these computations with respect to Table 11, which you gave to Mr. Alrich, are correctly shown on this page which you have just checked?

A. Yes. There is just one thing to be said about that life for the first and last items there. They were taken at the average 2112 for all of the other items in the group, the weighted-dollar average.

Q. That is, in respect to property installed prior to August 1, 1904?

A. And the miscellaneous items.

Q. And with respect to the miscellaneous items you depreciated them on the basis of assuming for them an average life obtained by a weighted average of the other items?

A. I applied the same rate that it would come out on the average for all of the other items actually, and that should, of course, be reduced to approximately 47 years.

Q. Well, did you know how long any of that property had been installed?

A. Well, I asked the dates on a great deal of it.

Q. I mean with respect to the property installed prior to 1904?

A. I guess I misspoke myself. I believe I said the estimated life as to the age. I did not. That was obtained in another fashion there.

Q. How did you get this forty-seven years of assumed life of the property installed prior to August 1, 1904?

A. Well, that is just what I have explained.

Q. You have not explained it yet so I understand it?

A. Well, I have applied the same rate there, that is, 2.17 per cent, which I obtained by finding the rate that resulted from the computations in connection with all of the other items except the first one and the last one. If I applied these annual percentages to the

dollars opposite each item except the first and the last in this
2113 Table 11, I would get a certain average rate for all of that property, which came out 2.17, which in other words is approximately 47 years, if you reduce it to years.

Q. Well, why did you assume twenty years of unexpired life with respect to the property installed in 1904, or installed prior to 16 years ago?

A. By taking the length of main in use at the end of each year, or whatever the period to be obtained, it was not the end of the year sometimes, in the early years, and I built up a curve showing the amount of mains in use by this company year by year since 1904 to this date, and prolonging the curve back to 1850, and on the assumption that practically all of those mains were put in during the latter years before 1904, I obtained as a minimum about 21½ years, which I used for all of that property installed prior to 1904.

Q. That is the way you computed what you assumed?

A. Just a moment——

Mr. Cummings: Let him finish.

The Witness (continuing): Then I used 20 years as the figure to be applied there as the minimum age on the average of the property installed prior to 1904 and in use on December 31, 1919. This is as of December 31, 1919.

Q. That is, that calculation made from mains was the basis on which you calculated or assumed the expired life of apparatus and piping in the works?

A. It was an estimate founded on the only data that I could obtain going back into that prior property, and in my judgment
2114 it would have to be even older than that at that time, very probably, considering the amount of retirements that have taken place.

Q. Well, what has such a calculation based on lengths and ages and assumptions with respect to mains got to do with water-gas sets and other apparatus in works?

A. Because that would indicate the growth of the plant at any rate, the output of the plant. There would be some relationship between the mains and the output.

Q. Well, what has expired life of mains, as you call it, got to do with a basis of estimating expired life of apparatus?

A. Well, from those figures, I do not think that they could be any less than that. That is the basis I had. It was the only data I had with respect to those prior years. In fact, I had nothing with respect to those prior years, and I built up that estimate that way, and it represented in my judgment the minimum. I assumed they were four years old, on the average, as at that date.

Q. As of what date?

A. August 1, 1904.

Q. How did you get your assumption of expired life in years for the miscellaneous items, 5.5 years?

A. That was based on the relative amounts of those expenditures in the various years, as shown in Complainant's Exhibit 96.

Q. Have you got your working papers upon which you worked out that figure of 5.5 years, the assumed expired life for the miscellaneous items?

2115 A. No. I find I have not got that. I thought I had, but I have not.

Q. Will you produce it at the next hearing?

A. I don't know whether I can. I know these were made up on scratch papers, and if it is not here it may have been mislaid.

Q. Well, you claim that you took Col. Miller's Exhibit 96, showing various purchases in the category of miscellaneous items in various years, and worked out what kind of an average for expired life?

A. Well, I just worked out a rough average on the expired life. For instance, if \$10 was expended in 1910 and that would have an average then of 9½ years at the end of 1919, I would multiply that by 9½, 10 by 9½, and get 95; then if a thousand dollars was spent in 1912, I would multiply that thousand by the age of that main, and then adding together the resultant dollar years by the total of the dollars I would get an average figure representing the weighted average age of expenditures.

Q. That is without respect to what kind of property it was in the different kinds of property that made up these miscellaneous items?

A. It was, yes.

Q. Now, turning from Table 11 for a moment just to get two or three matters of information on meters and connections, you took Col. Miller's figure for the estimated cost of meters and connections up to August 1, 1904, as shown by Exhibit 96, that is meters and connections in existence then and still in existence, and you added to that the debits and credits and built up a figure down to the present time, did you not?

2116 A. Yes, I added the cost. Well, I took the cost of all property installed since that time, and added it to that figure. I did not need to take in the credits there, because of the fact that I would assume that the credits, if there were any, were on account of expenditures prior to August 1, 1904.

The Master: Well, as I understand it, you accepted Col. Miller's estimated cost as of 1904?

The Witness: I did for the property there in 1904 and still there.

The Master: Yes?

The Witness: Yes.

The Master: So you have not questioned that figure at all?

The Witness: I have not.

Q. And you added to that the meters and connections added since August 1st, 1904?

A. Yes.

The Master: So that I get this perfectly clear, because I think it is important here, if you had believed, as you looked at it, that Colonel Miller was too high or too low as of 1904 costs, estimated costs, would you have challenged it in any of your tables?

The Witness: I certainly would have challenged it, yes.

The Master: And I am correct in assuming then that Colonel Miller's statement of his estimated cost in 1904 must be accepted?

The Witness: Well, I do not know of a better figure.

Mr. Tobin: If the Master please, that is as to certain particular items that Mr. Hine took.

2117 Mr. Ransom: Practically all of them, isn't it?

The Witness: It is relating to this physical property that I have taken the figures.

The Master: It relates to certain properties estimated by Colonel Miller as having cost in 1904 a certain sum of money. That was his estimated cost in 1904.

Mr. Tobin: Physical property.

Mr. Neumann: It is only physical property, not any intangibles.

Q. Is there any physical property as to which you did not accept Colonel Miller's figure?

A. No, not referring to page 2 of Exhibit 96.

Q. Which shows the cost of plant and distribution system, exclusive of undistributed structural cost up to and as of August 1st, 1904?

A. Yes.

Q. Now, in your tabulations—

A. (Interrupting.) I think that ought to be amplified by stating that while the title on page 2 says, "Acquired by the complainant company on August 1st, 1904." I believe that the text on the other pages will show that that means "and in use at the present time?"

The Master: Yes, there is no question about that.

Mr. Ransom: The whole exhibit is "and in use as of the present time."

The Master: What I wanted to get clear, and quickly, is that I have got at least one situation where there is no conflict in their judgment that, as to the property that is now there—

Mr. Neumann (interrupting): Physical property.

2118 The Master (continuing): Physical property that is now there and was there on August 1st, 1904, Colonel Miller and Mr. Hine agree as to its estimated cost at that time.

Q. Now, in your exhibit, for the purposes of figuring depreciation and so on, you have shown meters and connections separately, have you not?

A. I have.

Q. How did you, and from what source did you split up the item of \$21,595 for meters and connections, which Colonel Miller gave on page 2 of Exhibit 96 as a sum covering both?

A. I do not. That meter installation account covers nothing whatsoever except meter installation since August 1st, 1904, the installations as of 1904 being included in the meter figure, and they will be shown by Table 20, which is Exhibit A-105, where you will note that on August 1st, 1904, there is nothing in there for meter installation, that being included with the meters.

The Master: As I understand Mr. Hine, what is the figure that Colonel Miller gives for that tangible property estimated as of August 1st, 1904?

Mr. Ransom: \$280,108, including land.

By the Master:

Q. As I understand your testimony, it is not that you say that was its value, but you say that it undoubtedly must have cost at least that sum when it was purchased, up to that time, is that the idea?

A. I would say that if the property that was there then is there now.

Q. That they undoubtedly paid that much for it?

2119 A. That is a fair cost, I would say.

Q. Not value?

A. A fair estimate of the cost, what it cost when it was put in.

Q. That is what I want to get clear. Now, I want to get this, that in order to get at its value, then you depreciated it?

A. Yes.

Q. What you agree with is that when it was purchased and installed, they undoubtedly spent that much money for it?

A. That is it.

Q. And when you say that in order to get at its value as of August 1st, you have to depreciate it?

A. Yes.

By Mr. Ransom:

Q. In your table 25, with respect to mains, depreciation as to mains, for example, as of 1919, you give a figure of \$56,011 for the depreciation on mains up to December 31st, 1919. You have no table and no exhibit that I am able to find which gives any details of your method of computing such depreciation, if you computed it?

A. No, I do not believe there is any table that shows that I did compute it.

Q. Well, have you any working papers which show how you computed it?

A. Yes. I was never asked for those.

The Master: Have you got them here?

The Witness: Certainly.

Q. Well, let us see them.

Mr. Tobin: I suppose you take them subject to the rule, Judge Ransom.

A. (Witness hands paper.)

2120 Mr. Tobin: I think it ought to be noted that this particular paper has been taken by complainant and is being examined.

Mr. Ransom: It is.

Mr. Tobin: And its contents being made a matter of consultation with Colonel Miller.

The Master: Yes, it will be so noted.

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Q. On this matter of meters and connections, you say you took Colonel Miller's figure and you added to it new meters put in since August 1st, 1904?

A. All meters purchased since that date, at cost, shown by the ledgers of the company.

Q. All meters purchased or all meters installed and charged to capital account?

A. All charged to capital account, my understanding being that all meters are charged to capital account as purchased.

Mr. Neumann: Does counsel dispute that that is the custom of this company?

Q. How do you figure that you have given any credit to meters replaced?

A. Meters replaced?

Q. Yes, you say you have not taken into account the replacement of meters since 1904, on the assumption that they relate to meters that were installed prior to 1904.

A. My assumption is that Colonel Miller's figure for meters and installations is for meters and installations that were there on August 1st, 1904, and are still there. Now, if I add on all the meters purchased since that time I have certainly got them all in.

Q. Supposing that 25 per cent, or 50, of the meters which were in existence on August 1st, 1904, have since been replaced—rebuilt, wholly or in part; that affects the accuracy of your depreciation tables, does it not?

A. If they have been replaced, if 50 per cent of them have been replaced—

Q. Or part of them?

A. I will just take that.

Q. Or have been rebuilt in part, or renewed in part.

Mr. Tobin: Just a minute. If the Master please, I do not think it is a fair question, because the proposal as made by Judge Ransel is simply an assumption. It assumes something.

The Master: Of course, it does not prove anything; but it is proper cross examination.

A. If 50 per cent of these have been replaced it would mean that on August 1st, 1904, the company had approximately \$43,000 worth of meters and connections, instead of the figure shown by Colonel Miller on page 2 of Exhibit 96, of \$21,595.

Q. Or that meters have been partly rebuilt?

A. Well, I assume that in order to have the life which I have assumed of 40 years the meter has got to be repaired regularly as taken into the shop and that meters are repaired and replacements of minor parts are put in, and new sides put in when they are rusted out and that they are only scrapped when it involves an expenditure that would be unreasonable, and they throw them away, as they do scrap them.

Q. Now coming back to Table 11 that table was used by you in making up your various subsequent tables, was it not?

A. It was.

2122 Q. That is, in making up Table 21, Exhibit A-106—

A. Table 21 was it?

Q. Table 25 I mean.

A. Table 25, yes.

Q. Purporting to show what you call depreciation from December 31st, 1904, to 1919, you used Tables 10, 11 and 12, did you not?

A. I worked back from the figures as shown in those tables.

Q. And the figures for 1919 in Table 25, Exhibit A-106, represent the total of the depreciation column on these first supporting exhibits?

A. They do.

Q. And the first figure \$92,044 set opposite the heading Buildings and Apparatus is the sum of the depreciation columns in Tables 10 and 11?

A. That is correct.

Q. Who made up Table 11 for you? Or did you make it up yourself?

A. Table 11, the first actual computation work was done by Mr. Unger.

Q. What did you do about it.

A. I checked it. I instructed him as to how to make it up; I gave him the ages and I gave him the depreciation rate to use.

By the Master:

Q. What did you say was the average, 2.17?

A. 2.17 on Apparatus and Piping, that is all.

Q. That would mean according to what you told me some time ago that an amount should be added to the cost of the gas to make up that depreciation of 2.17 during the years?

A. Absolutely, on that particular part of the property, yes.

2123 Q. And if it is not saddled onto the consumer in that way, then the consumer ought not to get the benefit of the depreciation that you now claim?

A. Why, the consumer has got to, in my mind—

Q. Pay for it?

A. Pay for this.

Q. Yes, that is what I mean.

A. Surely.

By Mr. Ransom:

Q. When you say you checked Table 11 after Mr. Unger made it up, what do you mean that you did?

A. I mean that I compared practically every figure in this, that I went through most of the computations, that I put a check proof on all the totals.

Q. That is, you checked the totals, the footings?

A. Yes, checked across.

Q. And you checked these computations resulting from the application of the percentages of depreciation to the cost figures?

A. Yes, a great many of them.

Q. Take first the column headed "Depreciation" on sheet A of Table 11. Will you tell me whether the amount shown as the footing on that is correct, or anywhere near correct?

Mr. Tobin: Just a moment. If the Master please, previously you suggested that it would be possible for counsel on either side to indicate anything on a particular exhibit that was not correct, rather than driving in this particular way. Now I think it is only 2124 fair to this witness, who has worked under great pressure at all times, to be saved these minor matters in the way of digging it out in that fashion.

The Master: We will get at it very quickly. Is there an error there, Judge Ransom?

Mr. Ransom: Why, yes.

The Witness: There is an error in that.

Mr. Ransom: An error of not over a hundred per cent.

The Master: Suppose you just call attention to it.

Mr. Tobin: I ask that that last part be stricken out until we know what it is, first.

The Master: Yes. Recalculate it and see if this is not the situation. You may ask that question.

Mr. Ransom: He has footed up his depreciation column to total \$74,095.62 on Sheet A. The correct total is \$40,651.09, a difference of over \$34,000 out of \$40,000.

The Master: All right. Mr. Hine, check that up and see if it is not right.

Mr. Ransom: Now, that is assuming the correctness of the figures which make up the column, and I shall take them up in a moment.

The Master: Let us approach it that way.

Mr. Ransom: I may say that he checked—

Mr. Neumann: Suppose you just let him check one at a time.

Mr. Ransom: It will be of aid to him. The same error is carried forward into Sheet B of Table 11, and the figure that should be \$40,651.09, assuming the correctness of the figures that make 2125 up the column, is carried forward on Sheet B as \$74,095.62, and the total of Sheets A and B, relating to the Apparatus and Piping, is given at \$81,684.06, whereas a correct mathematical process would give it \$48,239.53.

Mr. Tobin: That is assuming, if the Master please, that the data that Judge Ransom has worked from is the same data Mr. Hine has in his hand.

The Master: Mr. Hine is required by this question to figure up his own figures and see if they agree with the figures now presented by Judge Ransom. If he does not, we will find out where the error is.

Mr. Ransom: We have used the blue prints in making this check.

Mr. Tobin: We would like to have it noted, if the Master please, that counsel for the complainant still has the working paper of Mr. Hine as to the age of the mains and services.

The Master: Yes.

The Witness: I have made that computation.

Q. How much is your depreciation column on Table 11 overstated?

A. The addition there is \$33,445.53 more than the correct figure and, consequently, the last column Cost Less Depreciation is understated by the same amount, and that same error, a mistake in addition, is carried forward into Table 11-B and the difference extends through on the whole thing.

By the Master:

Q. Does it affect the percentages?

2126 A. It affects the final percentages—well, not the individual percentages, no, but it does affect the depreciation.

Q. Does it affect that rate of 2.17?

A. No, it would not affect the 2.17.

Q. How is that?

A. Well, because the 2.17 is founded on the annual amount that would have to be laid aside for operating expenses, not on the accrued depreciation as of December 31st.

By Mr. Ransom:

Q. The same error is likewise carried into the Table 25, Defendants' Exhibit A-106, is it not?

A. Undoubtedly. I will check it in just a moment. (After making computation.) Yes.

Q. And it is likewise carried into Table 30, Defendants' Exhibit A-107?

A. Yes, sir.

Q. Which table purports to show cost of fixed capital less depreciation?

The Master: He said yes.

Mr. Tobin: He said yes. He admits the mistake in calculation.

Q. Coming back to this column and taking up some of the items in it, according to your working papers this first item of property installed prior to August 1, 1901, at a cost of \$64,600, you have assumed a life of forty-seven years, reached in the way which you have described, and have assumed an expired life of twenty years?

Mr. Tobin: If the Master please, I think the witness has clearly answered that question before.

Q. Well, is that correct?

The Master: That is preliminary to another question.

2127 A. Yes. Well, I have told you it is slightly incorrect, in that I have taken a certain rate.

By the Master:

Q. But it is substantially?

A. It is substantially that. You would not check to the cent for

the forty-seven years, and I have taken 2.17 as the annual rate and multiplied that by twenty.

Q. As near as you could work it out that would be forty-seven years?

A. Yes, giving it in even years.

By Mr. Ransom:

Q. Then you have not even undertaken to fix a period of useful life, as you call it, or a definite period of years of age expired, have you?

Mr. Tobin: If the Master please, I think the witness has clearly indicated just what he has done as concerns these particular calculations, more particularly along the question that has been asked. He used the best data available and all the information that it was possible to have at hand. The Master quite well knows that, as was set forth in Colonel Miller's exhibit, there was not the best kind of information back of the year 1904.

The Master: The objection is overruled.

Mr. Tobin: Exception.

Q. Do you recall the question now?

A. Yes, I think that I have. I do not think that I agree with your assumptions there. I have fixed it.

Mr. Ransom: May I mark in evidence this tabulation, in which he checked the years of assumed life and the age, which he gave to Mr. Alrich. In other respects the paper is a copy of Table 11.

Mr. Cummings: Do you offer it in evidence?

Mr. Neumann: If the paper is a copy of Exhibit 11, what is the purpose of offering this?

Mr. Ransom: In respect to those two columns, on which I asked him to check the figures of Mr. Hine.

Mr. Neumann: On counsel's own statement, if this is the same as Table 11, what is the purpose of offering it?

Mr. Ransom: It is the same except as to the columns which he checked. I wish the record to show those figures.

The Master: I will receive it on the statement of counsel that except for those two columns it is a copy of Exhibit 11, the witness having identified the two first columns as being correct.

Mr. Neumann: The Court did not give us the opportunity to put in our objections on it. I simply asked the question as to what the purpose was.

The Master: I thought you were objecting.

Mr. Neumann: Now I object to it on the ground it is incompetent, irrelevant and immaterial.

The Master: I will allow it.

Mr. Neumann: Exception.

Marked Complainant's Exhibit 107.

2129 The Witness: In connection with that first item of 47 years and also the miscellaneous items to which the same rate is applied, I have used the rate of 2.17. I find it figures out closer to 46 years, if you reduce it back to years, I have worked from the percentage, as I have stated before.

Q. What assumed number of years of useful life, as you call it, did you attribute to the property acquired August 1, 1904?

Mr. Tobin: Just a moment, please. If the Master please, I think that the paper itself shows exactly what he is trying to have this witness answer. It is unfair to go back again and again and have the witness repeat his answers. He has answered that question and he has answered it fully.

The Master: Overruled.

Mr. Tobin: Exception.

A. The average that I obtained for the other items, definite items in making up this account.

Q. What number of years?

A. It figures out to a rate of years of approximately, as near as I have got it on the slide rule, now, 46.1 years. I did not assign it, though, by the year basis; I took the average for the other items, and it is the resultant year that you would compute.

Q. Have you ever before calculated the number of years of estimated life?

A. Ever before today?

Q. Yes.

A. I did for Mr. Alrich for the first time. I reduced that to years.

Q. 47?

A. And I got 47, as I remember, then. I did it on the slide rule.

2130 Q. If you assume 47 years of useful life and 20 years of expired life, the quantity of depreciation shown as the first figure in the depreciation column of Table 11 is incorrect, is it not?

A. Oh, it would be. That is not taken way out to the nth place, and it was computed in another manner, as I have explained to Mr. Alrich and I have explained to you.

Q. It is not a matter of the nth place, it is the difference between \$47,489.24, which would be the figure on a basis of a 47-year life, and the figure \$28,036.40, which you set down in this column.

Mr. Tobin: Just a moment. If the Master pleases, I think the witness has repeatedly stated that he did not attempt to measure the exact life of that property, that he was asked the result from figures that he had obtained. He has repeated that in the record several times, and I do not think it is fair for Mr. Ransom to again go back and have it repeated in this record. I think it has been done sufficiently.

The Master: Overruled.

Mr. Tobin: Exception.

A. The error in that computation is that the 47 is not out to the end. What was actually done was to take 2.17 or \$64,300, which gave \$1,401.82 as the annual depreciation, and that multiplied by 20 gave the \$28,036.40.

Q. Is it not a fact that taking the items installed prior to August 1, 1904, and making the computation which you say that you made, the result is a figure of 47 and not of 46.1?

Mr. Tobin: If the Master pleases, I think it is unfair to try to have the witness assume something which he did not do at
2131 all, and then try and get an answer to a question upon that assumption. I think it is decidedly unfair to carry on this line of questioning.

Mr. Neumann: He has distinctly shown time and time again that he used 2.17, the annual depreciation.

The Master: The objections are overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

A. Would you please repeat that question?

Q. Is it not a fact that taking the items installed prior to August 1, 1904, and making the computation which you say that you made, the result is a figure of 47 and not of 46.1—that is, that the average is 47 and not 46.1?

A. No, I do not get that.

Mr. Neumann: I submit that is an answer, if the Court please. He has answered that question.

Q. Let us see if he understands it. Taking these items, the life in years, aside from the first and last items in Table 11, and producing such an average as you have described, isn't that resulting average 47, as you told Mr. Alrich, and not 46.1?

The Master: Taking it by years instead of the percentage rate.

A. Well, I haven't it that way. It would, of course, throw the thing a little different, because you cut off different points on your percentages. Some places here the last 3.33 is as close as I have gone, and it might make a difference in per cent.

Q. You mean to say you do not take all those items, except the first and the last, and produce an average?

2132 A. I did, but I told you how I did it.

The Master: What Judge Ransom means is that you did not take a percentage but took the years?

The Witness: No.

The Master: Judge Ransom asks you the direct question now, didn't you take the years now and average it and find it to be 47?

The Witness: No, not in that way.

Q. Let us take the second item. You told Mr. Alrich that your estimated useful life was thirty years and your calculation of the expired life was fourteen years for this 7 foot 6 Lowe water-gas set.

On that basis the amount of accrued depreciation would be 14/30 of the cost of that water gas set, \$8,135.21, would it not?

A. Would you please give me that again?

The Master: The stenographer will read it.

Q. (Read by the stenographer.)

A. Yes, on that basis. The way it was calculated was by taking 3.33 per cent of the cost, which gave an annual of \$270.90. Multiplying that \$270.90 by 14 produced \$3,792.60. If you would change the fractions and use fractions instead of decimals you would get a slightly different result.

By the Master:

Q. Why was it not fairer to take 14/30ths or, say 7/15ths?

A. Why, because I was calculating the annual depreciation first, and then I just multiplied that by the years.

Q. That is against this complainant company somewhat, though, is it not?

2133 A. Well, it is just—no, it would not be against them at all, because 3.33 is not as much as $3\frac{1}{3}$. Now, if you were to use $3\frac{1}{3}$ applied to that, the annual depreciation would be \$271.17; the other way it figures out \$270.90, and therefore the depreciation, handling it the way I did, the accrued depreciation, was slightly less. Now, that would go both ways, depending on how your fractions came, whether the decimals were more or less than the half.

Mr. Tobin: The Master might like to know that the exhibit of Mr. Hine concerning the life of the mains and services, and their age, is still in the possession of complainant's counsel.

The Master: Do not keep repeating that.

Mr. Tobin: It might also be interesting to know that the complainant company has contended that there is no depreciation and still they attack it here.

The Master: They have got to. You have offered the testimony on depreciation and they cannot permit the record to stand as it is.

Q. The same way with the next item; for example, you told Mr. Alrich that your assumption of the usual life was $33\frac{1}{3}$ years and your estimate or calculation of the expired life was 12 years, which would make the accrued depreciation under your theory 12 into $33\frac{1}{3}$ of the cost as shown, which gives again a different figure than you have set out in your depreciation column.

Mr. Cummings: I object to this, your Honor. It just shows if he figured it in a different way he would get a different result.
2134 that is all.

The Master: It is a proper question.

A. There may be a slight difference handling it by fractions rather than by percentages. I have taken 3 per cent of \$1,506.75 as the annual requirement, and taken the depreciation as 12 times that.

Q. In other words, your theory of accrued age or accrued deprecia-

tion is not based upon any accurate relationship to the actual number of years of life and actual number of years of expired life, but rather upon some percentages?

Mr. Neumann: That is objected to on the ground it is incompetent, irrelevant and immaterial, presupposes a set of facts that has not been testified to, and not in accordance with the record up to the present time.

The Master: Overruled. The witness will so state if that is the case.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

A. I say that it is based on an accurate computation. As to whether you should use percentages or whether you should use fractions in my mind does not destroy the accuracy.

Q. What you seek is a fraction and not a definite number of years of assumed useful life and a definite number of years of expired life?

A. No, I took a definite number of years of assumed useful life and I took the expired life and I reduced the definite number of years of assumed useful life to a certain percentage per year, and therefore I found the depreciation accruing here by that 2135 method, and then I multiplied that depreciation, so computed as accruing each year, by the age in years I had taken.

Q. But in each instance you took fractions which did not actually or closely correspond—or you took percentages which did not actually or closely correspond to the actual fractions indicated by the years of assumed useful life and the years of expired life.

Mr. Neumann: Just a moment.

A. I did.

Mr. Neumann: All right, he said he did.

The Master: What did you expect him to say?

Mr. Neumann: Here is a difference between counsel and the witness as to a method. There is no real difference at all.

The Master: You must assume this witness is going to stand his ground. He knows what he is contending for. Also, on the other hand, Judge Ransom is putting on the record his method of calculation.

Q. Let us take the last item, you put that down at 47 years, the miscellaneous item, in the manner which you have described. You said that property had a useful life of 47 years and an estimated expired life of 51 $\frac{1}{2}$?

A. I said approximately, and told Mr. Alrich approximately 47; and it is stated repeatedly how that was obtained, that I took 2.17 per cent of the cost and so obtained the annual amount, and then multiplied that by 51 $\frac{1}{2}$.

Q. Can you now state precisely in years the amount of assumed useful life of this property?

A. For those miscellaneous items?

Q. Yes.

2136 A. No, it would bring a string of figures and I do not know whether I could get to anything definite.

Q. You use—

A. I use there in connection with those two 2.72 per cent per annum, which would result approximately in 46 or 47 years.

Q. Approximately. Can't you give us anything more definite?

Mr. Neumann: How close do you want the witness to come?

A. Very close to 46.1. I have not taken it out by long hand to see how far it would go.

Mr. Ransom: I offer in evidence the witness' working papers or computation, or non-computation, of depreciation of mains.

Mr. Neumann: I think that is manifestly unfair and ungentlemanly. The word "non-computation" should be stricken from the offer.

The Master: I do not think you need worry about that.

Mr. Neumann: But we should be gentlemanly, if nothing else.

The Master: The trouble is we are lawyers.

Mr. Neumann: That should not preclude us from being gentlemen—even Judge Ransom. There is no way of offering an exhibit like that. The language is insulting.

The Master: It is not insulting.

Mr. Cummings: I make the objection to it on the ground that he has shown he did not use that method that the Judge is questioning about.

2137 The Master: I do not recognize your objection. I am recognizing Mr. Tobin today.

Mr. Cummings: I except to that, then.

Marked Complainant's Exhibit No. 108.

Q. In making up this Complainant's Exhibit No. 108, which is your working sheet with respect to depreciation of mains, with respect to the column called Age in Years, did you start in 1919 and work back?

A. Would you let me see the paper?

Q. (Hands witness paper.)

A. Will you please repeat the question?

Q. (Read by the stenographer.)

A. No, for the cost of the mains installed from August 1, 1904, to 12/31/04, I took the age as 15 years. For those installed in 1905 the age is 14½ years, on the average at the end of 1919 and so on, and for the mains installed prior to August 1, 1904, I took 20 years.

Q. Why did you take 20 years for those installed prior to 1904?

A. As I have explained before.

Q. Is that all?

A. That is all that I can say, that I determined something over 21 years a minimum and used 20 years for that property.

Q. That is, you assumed that any main that had been laid prior to August 1, 1904, is at least 20 years old: is that right?

A. No, I did not.

Q. What did you do?

A. I assumed on the average all the mains that are now in use, that were installed prior to August 1, 1904, are 20 years old.

Q. That is a weighted average?

A. Yes.

2138 Q. Irrespective of size of mains?

A. Irrespective of sizes.

Q. In the second place you assume that any main which was laid between August 1, 1904, and December 31, 1904, is 15 years old?

A. I do.

Q. And that any main laid prior to December 31, 1905, is 14½ years old?

A. No, I did not do that. I assumed that any that was laid in 1905 is 14½ years old.

The Master: Prior to December 31st of each year?

The Witness: On the average, not in any one year. He did not limit it to that.

Mr. Tobin: No, he did not; that was not his question.

The Witness: All mains laid in 1905, prior to December 31, 1905, are taken as 14½ years on the average.

Q. How do you reach from that that any mains laid between August 1, 1904, and December 31, 1904, are 15 years old?

Mr. Tobin: Just a moment, please. If the Master pleases, I think that the witness has answered that question completely; he has answered it fully on the record. He should not be asked the same question.

A. I did not take that out any more places than that; the nearest I have taken any of those was to the half year. It would be slightly more than 15 years old on the average. I have taken 15 years, that is all.

Q. Why did you take 15, just as an approximation or a guess?

A. No, it is not an approximation or a guess, it is close enough for an approximation of that kind. I have taken the nearest
2139 half. On the assumption that mains are laid uniformly through the year, or half before June and half after it.

Q. Your depreciation rate seems to vary up and down for the different years.

A. Yes, that is based on the rate, or on an estimated average useful life for wrought-iron mains 40 years, and 100 years for cast-iron mains, and the variation is produced because of the variation in the amounts of those mains that are laid in the various years, all of the mains now in use and installed prior to August 1, 1904, being taken as cast-iron mains.

Q. Have you the details of what you claim is the depreciation rate, or as to how you got that depreciation rate?

A. I see unfortunately I have not. I can send down for it and have it sent up here.

Q. Can you get it tomorrow and let us look at it?

A. I think I can get it up here tonight.

Q. Do you want to keep this and let me have a copy of it (handing witness paper)?

A. I can make a copy for you.

Q. I will make a copy.

A. I would like to have the original.

Q. I will let you have the original back. You testified, Mr. Hine, that Table 20 was made up from the preceding exhibits, together with Col. Miller's figure as to the cost of property up to August 1, 1904, physical property now in use, taken from Complainant's Exhibit 96?

A. Yes.

Q. And in making up Table 20 you started with the year 1919, you said, "starting with the figure as of December 31, 1919, which was shown by the preceding tables"—I am reading your 2140 testimony on page 2272—"and then working back from the book debits and credits to date as of August 1, 1904, by subtracting the additions and adding on deductions as I went back, the Douglaston Extension being set forth separately." Is that correct?

A. Yes, sir.

The Master: I think it ought to be noted that you are reading from the mimeograph record.

Mr. Ransom: Yes, page 2272 of the mimeograph record.

Q. So that the 1919 figures in Table 20, Exhibit A-105, are the only figures taken directly from and which are to be found in the preceding exhibits?

A. Well, there are not all of those shown in the preceding exhibits, but those are the only ones that are directly shown in any of them, in the preceding exhibits.

Q. Anything else that is in Table 20 becomes a matter of computation?

A. From the preceding exhibits.

Q. No.

Mr. Neumann: Why not take the witness's testimony instead of Mr. Ransom's?

Q. But so far as the withdrawals from the preceding exhibits are concerned yes.

Mr. Tobin: Let the witness say.

A. From the preceding exhibits and the amounts shown for mains, services, meters as per Exhibit 96, those amounts being for the property installed prior to August 1, 1904, and still in use. That is all that you would need.

Q. Exhibits A-96, A-97, A-98 purport to show the property now in existence and in use at its book cost plus Colonel Miller's 2141 figure for property up to August 1st, 1904?

A. Yes.

Q. And those figure buildings, apparatus and miscellaneous?

A. Yes.

Q. And your first two items in Table 20 for 1919 represent the totals of Tables 10, 11 and 12?

A. Yes, they are taken from those tables.

Q. And they represent the totals of those tables?

A. Yes, the total of those two items is the total of 10, 11 and 12.

Q. Why did you change your method when you came to the items of mains and other items following?

A. Because of the fact that there was no way of setting up, and I did not believe it was necessary to set up, each item of mains separate. It was not handled in that fashion and there was no necessity. I have set up the debits and the credits to mains, and if you would add on Colonel Miller's figure, why, you would have the amount. I have not depreciated them on the basis of specific pieces of main—that is, specific life for a 6 inch main in any one street, more than I apply to another main in another street—and there was no necessity of setting them up separately.

Q. At least you did not do it?

A. At least I did not, yes.

Q. And you did the same thing with meters?

A. Yes, they were treated as a unit.

Q. When you come to mains, then you go to this table 15, Mains, debits and credits, for your source of information?

2142 A. For working backwards, yes.

Q. Table 15, Mains, debits and credits, does not show any opening balance for August 1st, 1904, does it?

A. It does not. It does not show any balance whatsoever.

Q. In setting down your figure for mains you took Colonel Miller's 1904 and added to it the adjustment debits as arrived at by you, did you not?

A. I did.

Q. Why did you not use the same method in Buildings, Apparatus and Miscellaneous, using Colonel Miller's opening figure plus the debits and credits in Tables 13 and 14?

A. Because of the fact—to arrive at the figure for December 31st, 1919?

Q. Yes?

A. I have applied the same method to get that figure.

Q. That is, for buildings, apparatus and miscellaneous have you taken—

A. Oh, no, it would be slightly different there, because of the fact that some of that property has evidently been retired that was put in since 1904, and this has been tied up with the inventory, and working from the figures used by Colonel Miller backward. Now, with the mains that procedure was not necessary.

Q. Have not some of the mains been retired that were put in since 1904, or did you just assume they had them?

A. No, according to the company one small piece of main has been retired from the period 8/1/04 to 1919, inclusive.

Q. Let us see about that. Your figure for 1919 in Table 20, Exhibit A-105, purports to show the balance of property as
2143 per the books as of December 31st, 1919?

A. It does not.

Q. It does not even purport to show the balance then as per the books?

A. No, it does not tend to show it as per the books, but it tends to show the balance of property there starting with a certain amount at 8/1/04 and taking the additions since then, but not the balance.

Q. Aside from the Miller figure as representing cost up to August 1st, 1904, does this Table 20, Cost of Fixed Capital, purport to show the cost as per the books?

Mr. Neumann: That is objected to on the ground it is incompetent, irrelevant and immaterial and not a proper statement. Reproduction cost is what Mr. Miller made it as of 1904, and not cost.

The Master: Overruled.

Mr. Neumann: Exception.

The Master: Mr. Hine agrees with Mr. Miller that the figure he places as of August 1st, 1904, is probably the actual amount paid for it. They agree. Aside from the Miller figure of August 1st, 1904, have you taken the additions from the books?

The Witness: Yes, I have worked back from the schedule Mr. Miller had and have checked back to the books and used the book figures.

Q. Your figure amounts to \$375,838?

A. It does.

Q. In reaching that figure did you deduct the retirement of mains in 1912 as shown in your table 15, Exhibit A-101?

2144 A. No.

Q. On meters, in stating your 1919 net figure, have you deducted the retirements shown on your table 17, Exhibit A-103, of \$3,644.51?

A. No, I have added on the adjusted debits to the figures taken for the cost of meters and meter installations as of 8/1/04.

Q. If you have done what you say on page 2272 of the mimeograph record you have done, the results which you reached by this method of going backward to August 1st, 1904, ought to produce and equal Colonel Miller's figure, should it not?

A. No, it should be a higher figure than Colonel Miller's figure, because I have added on the deductions, and it is a higher figure.

Q. How can you undertake to state the cost of property in use as of the end of 1919 and over the previous years through this process of working back, which you have described, to 1904, without taking into account the retirements of property shown by the books and contained in your own exhibit?

A. I do take those into account in working backwards. If Colonel Miller's figure, as I take it, and as I have taken it, represents the property there in 1904 and there now, and if the retirements or many of those retirements were out of that property, that were there in 1904, they would not be there now, so there was more there in 1904 than would be there now, that was there in 1904. It is complicated, but you have got to think a little, and you will find here, if you look at this figure of mains, for instance, as of 8/1/04, on

Table 20, which is Exhibit A-105, I get \$117,874. Now, in
2145 working backwards I have added on to the figure Colonel
Miller gives now for the mains that are there now and were
there then.

Q. Is it not a fact that your item for mains for August, 1904, on
Table 20, varies from Colonel Miller's figure to the extent of the re-
tirement of mains which you failed to take into account?

A. It varies by the retirement which I did take into account and
which I have repeatedly told you I did take into account in working
backwards.

Q. Then why does it vary by that amount?

A. I cannot explain that any more. I told you I added on the
retirement, and this figure that I have in Table 20 is greater than
Colonel Miller's figure by the amount of the retirement.

Mr. Tobin: If the Master pleases, I think it is not fair to go on
with this continuous questioning. That is, if Mr. Ransom will be
good enough to examine the exhibits he will find it is quite clear
there.

Q. Well, will you please explain why the amount shown for 1919
in Table 20, for Buildings and Apparatus, namely \$275,611, differs
by more than \$23,000 from the amount arrived at for buildings and
apparatus by using your tables 12 and 13 instead of your tables 10
and 11?

A. Well, there must be something wrong then in the books. I
cannot see and I do not know where that difference is.

Q. Or in your tables?

A. I have told you exactly how I made this up and this checks
with Exhibit 93—or 96. Now, there may be something or other in
those debits and credits that is not right. They may not have kept
their books right.

2146 Q. Or you may not have made your tables right?

A. Well, I happen to know that they check up with the
other things and they must be right. They check with the balances.

Q. Is not a fact that if you take your balance for August 1,
1904, as per your table No. 20, and subtract it from your balance of
December 31, 1919, in the same table, the difference represents the
net increase during that period shown by the books?

A. It should if the books were properly kept.

Q. Or, if your table was correctly made up?

A. No, if the books were properly kept.

Q. This net increase as shown by the books is contained in your
Tables 13 to 18, isn't it?

A. It is not made up that way. It is property that can be identi-
fied back to the books.

Q. Only property that you were able to identify?

A. No, Colonel Miller was unable to identify the same property.

Q. Can you offer any explanation why the increase that you have
indicated by your Table 20 is less than the net increase which you
have indicated by your Tables 13 to 18 to the amount of \$1,210,307?

Mr. Tobin: I don't think it is fair to repeat the question. This witness has answered that question four or five different times. It is unfair to ask him again and again the same questions. He has explained it on the record.

The Master: Objection overruled.

Mr. Tobin: Exception.

A. I don't know just what it is. Do you wish me to make the calculation now?

Q. I ask you if you can make any explanation of it?

A. I would have to find out what it is, to look at it. I cannot explain it just on your description.

Mr. Ransom: I will let the record speak for itself.

Q. With respect to the Flushing plant concerning which you have given tables of depreciation figures in the way in which you have described, what life did you assume for this plant?

A. I assumed a life for these various items making up the plant, lives for the various items or classes of items, as I have testified to.

Q. Did you make any estimate of the life of the plant, as you undertook to testify in the Consolidated case?

A. No, I used the items. I had the items here, and in the Consolidated case I did not have the items.

Q. In the Consolidated case you testified to a life of fifty years for manufacturing plant, did you not?

A. I believe I used that figure, including holders at the manufacturing station.

Q. What life did you or would you assign to this plant?

A. It would figure out approximately 45.60 years.

Q. What is your method of reaching such a figure?

A. The method of reaching that figure is taking the total cost of the buildings as shown on Table 10, \$46,217.51; and adding to that the cost of the apparatus and piping, that is, the other plant equipment, \$229,393.16, as shown on Table 11; adding them together, and getting a total of \$275,610.67. Then, taking the annual depreciation which I have computed for buildings as 1,069.83; and the annual depreciation for apparatus and piping of 4,972.97. In that way I get the annual depreciation requirement for buildings, apparatus and piping, of \$6,042.80. Dividing the \$6,042.80 by the \$275,610.67, I find that the annual requirement is 2.19 per cent of the cost, which figure would result in the average age that I mentioned.

Q. Is that the method which you followed in the Consolidated case?

A. It is not. In the Consolidated case I assumed a 50-year life for the plant. I did not have the specific pieces of apparatus, no list of the apparatus and units.

Q. Now, before estimating your accrued depreciation set forth in the third column of your Tables 10, 11 and 12, did you ascertain by inspection and examination of the property the extent of physical decay, if any, of each or any of the items?

A. I went over the whole plant generally to see the condition of the plant, to see how it was maintained. I did not make a specific study of each and every piece of apparatus and equipment to find out just its condition from wear and tear, and how soon it would have to be repacked, if it was a pump, or whether a new shingle would have to be put on some building.

Q. You did not undertake to ascertain the extent of physical decay of each item then?

A. No, I did not.

Q. Does your estimate of accrued depreciation as set forth 2149 in these exhibits purport to represent any dilapidation or deferred maintenance, which you think you actually discovered?

A. No, I added nothing for that.

Q. And included nothing for that?

A. No. I would say that this plant is maintained well, but there is deferred maintenance there, and there will be in every plant always, but that is only incidental, one of the incidental things, and that is not taken care of until the time comes when it is best to take care of it.

Q. Does your estimate of accrued depreciation purport to measure any reduction in the present operating efficiency of the plant and its equipment on its efficiency when new?

A. No.

Q. In compiling these Tables 10 and 11, did you make any calculation to discover what the composite life for the entire plant is, the life expectancies which you did assign to the different items produced?

A. No, except by these accounts. I have a figure there at the end which gives it roughly.

Q. In your Table 10, have you assumed 50 years as the life expectancy of a brick building?

A. I have.

Q. And twenty-five years as the life expectancy of a frame building?

A. Yes, generally speaking at least. There may be one or two slight variations from that.

Q. What life expectancy have you assumed for the garage?

A. That was thirty years.

Q. Why did you assume for this building a life other than twenty-five or fifty years?

A. Because of the construction of that garage. It was a frame structure with galvanized iron siding over it. I gave it a little longer life.

2150 Q. A little longer life than what?

A. Than I otherwise would have given on a frame building.

Q. Have you had any experience with respect to sheet metal buildings like this garage?

A. Yes, some, considerable.

Q. As to their life?

A. Some considerable.

Q. Where?

A. In St. Louis and around this territory.

Q. What instance can you give, or instances, sustaining a life expectancy of thirty years for a building of this kind?

A. Well, I cannot give you any specific instances. I have seen many of them that did not last anywhere near as long.

Q. You mean they were taken down before a greater period had expired?

A. Yes, and I have seen them where they have absolutely rusted to pieces, and I have seen them where they have fallen down. I have seen all kinds of things happen to that kind of building.

Q. Do you want to give any instances warranting an expectancy of thirty years for this garage building?

Mr. Neumann: I object to that on the ground that it is fully covered.

Q. You assume that this would last a little longer than the other frame buildings on this property?

Mr. Tobin: The witness has answered that, and there is no necessity of lumbering up the record with repeated questions and answers of the same kind.

The Master: Objection overruled.

Mr. Tobin: Exception.

151 A. I have estimated a longer life for this than for the frame structure at that plant, yes.

Q. Did you ascertain that the frame structure at that plant already have had a life in excess of thirty years?

A. Probably there are some that have. That is the average life that I have estimated.

The Master: On what do you base that estimate of twenty-five years for a frame building?

The Witness: Well, on a general knowledge only. I have never been able to gather data so that I could absolutely prove lives of this type of building. They keep changing as there is progress in the art, as larger structures are required. You see them removed in three or four years. I have studied the retirement of buildings as they are reported by companies in this district and in my judgment twenty-five years is a reasonable average life for a frame structure in the gas business.

Q. What instances can you give sustaining an average life of twenty-five years for frame structures in a gas works?

A. I cannot give you any detailed stuff on that.

Q. Not any?

A. Not any details; I have nothing with me.

Q. Did you ascertain from the facts and from the testimony in this case that on August 1, 1904, there had been a gas works at this location in Flushing for more than forty years?

A. I do not remember the forty years. There had been one here, I believe, from somewhere around 1850.

2152 Mr. Tobin: 1855.

The Witness: Some time in the 50's.

Q. How do you know that but some or all of the buildings in this group were not forty years of age in 1904, instead of four and a half years?

A. I don't know. These buildings left there are pieces of buildings, generally speaking. The additions have been additions to buildings, and it would be almost impossible to tell just what they were.

Mr. Neumann: May we ask the Master just what the purpose of these questions is?

The Master: Proceed.

Q. The other items in Table 10, if no information had been available to you as to the year when the expenditure shown in the second column had been made, it would have been necessary for you to have made an estimate or guess, just as you did as to the first item, wouldn't it?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial, and it presupposes a state of facts not testified to, and a state of facts not supported by the record.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. I believe that this figure of 20 years was a minimum estimate, and if there had not been any figures available as to the age of these expenditures, these additions, why either an estimate of their age would have had to have been made, or nothing could have been done that would require the use of their age.

Q. You testified in the Consolidated case that nobody could know the age of anything, didn't you?

2153 A. No, I did not. That is absurd, I would say. If I did, I was in a trance.

Q. I admit your assumption.

A. Well, I vigorously protest against having said anything like that.

Q. If I said age, I misspoke. You said that nobody could know the life of anything.

A. No, not until it has expired definitely. We can get out actuarial tables as to the expectancy of various ages, but nobody can say definitely when anybody is going to die, unless he is going to kill him and can do it.

Q. Do you say that you can or cannot know the life of a piece of property, or of properties making up a plant?

A. I don't believe that anybody can fix absolutely the life of any kind of apparatus or property unless there is some outside influence that arbitrarily cuts off its life. Now, if you know that at a certain time a building has got to be razed, then you can tell how long it is going to live, although it may fall down before that time because of an accident. It cannot exceed that life, that is sure.

Q. In your estimates of what you call useful life of property have

you taken into account the possibility or contingency of decisions to remove for reasons not relating to the use of the property?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial, vague and meaningless, and indefinite.

The Master: Do you understand it, Mr. Hine?

The Witness: I don't know whether I understand it. I have an understanding, and I think I can make myself clear.

2154 I have taken into account everything that I can conceive of that would cause depreciation or loss of life, that is, such as progress in the art, increase in business, and all of those factors. Now, if those are the things that you mean, yes, I have taken them into account.

Q. Well, with respect to this group of buildings, or these buildings that we have been talking about, and this apparatus, just how have you taken into account the factor of increase in business?

A. Well, because——

Q. I mean how concretely.

Mr. Tobin: If the Master please, I think the witness ought to be allowed to answer the question. He should not be directed to answer it in a particular way that Mr. Ransom wants.

The Master: He will be allowed to answer if you don't interrupt.

A. I cannot certainly make any allowance that way. Things go out of use due to a combination of many causes usually. It is very seldom it is one cause, unless it is some outside influence, some absolutely outside influence that causes that, and even then there is usually a combination of causes. Now, as a plant becomes inadequate, as you think you may want a larger building there, or to put in larger apparatus, you will allow more physical decay to occur, you do not maintain it in the same way. All these things combined together cause depreciation of the property in time, and fix the useful life of property on the average, and I figure that on the average for brick structures in a gas plant, that 50 years is a fair estimate for their useful life, considering all these factors.

2155 Q. Do you figure that this plant is going to become inadequate?

A. Well, it is going to be a very peculiar community if this particular plant does not become inadequate.

Q. Do you figure that it is going to become inadequate?

A. I do, yes, this particular plant. Now, don't misconstrue me there, I say this particular plant.

Q. When?

A. I don't know when.

Q. Within what period of time?

A. I have not made a study of that, but inadequacy is one of the factors that come in. It is going to be inadequate some day unless the growth of this city changes a great deal.

Q. Take the brick buildings, how did you take into account with respect to what you call depreciation as to these buildings, the pros-

pective increase of business, or the prospective inadequacy? Can you give any indication of the way you took it into account?

Mr. Tobin: If your Honor please, I think the witness has answered that question two or three times. He should not be asked again and again. What is the use of lumbering up the record repeating questions and answers?

The Master: Objection overruled.

Mr. Tobin: Exception.

A. I cannot answer that. I have not taken that specifically, and, as I stated before, it is a combination of everything. In my mind a 50-year life is fair.

Q. Can you give any itemization of it?

A. I cannot.

2156 Q. Or any illustration of how you have used these different factors you have mentioned?

A. No, I have just considered those, and have reached in my mind a fair estimate. There would be this to be stated however: If the estimate was high—I mean if you had estimated a 25 year life, we will say, where the correct life should have been 35, it would mean that the annual depreciation requirements would be higher, and while you were too high in your accrued depreciation, you would be too high also in your annual requirements, and they would counterbalance each other. That is a factor.

By the Master:

Q. In other words, if you made a mistake, and I charged it to the consumer, the consumer has got to pay more than he ought to pay?

A. No, he would not, because that applies on both sides. In one place it would be a reduction in the value, and on the other side it would be an increase in the rate.

Q. And all the consumer knows is that he would be paying 6 or 7 cents more per thousand cubic feet?

A. No, that is not the way it figures out.

Q. How does it figure out?

A. If there was no such thing as depreciation the consumer would not have to pay anything for the use of this property. That would mean 6 cents reduction in operating expenses, and in my mind it would mean also that there was no accrued depreciation to be deducted, if there was not, while he would not pay the 6 cent operating expenses, he would be paying more as a return on the value, and they tend to counterbalance.

2157 By Mr. Ransom:

Q. And the investment or property would have been correspondingly confiscated?

A. By the example I just stated?

Q. Yes.

A. There would not be any confiscation. If there is no depreciation or anything there cannot be any confiscation. That is absurd of

of course, because I know there is depreciation, and there would be confiscation if the consumer did not pay for it.

Mr. Neumann: Mr. Ransom, I take it, assents to that?

Mr. Ransom: I do not, or anybody else except this witness.

By the Master:

Q. This is what I do not get clear, Mr. Hine: Suppose the life of a plant is 100 years instead of 50 years. If I assume your figure of 50 years, and I follow your reasoning, and charge the consumer with an operating expense to set up a reserve on the theory of 50 years—

A. Yes.

Q. And the fact is that the plant is good for 100 years, then I have spread the cost of this over only 50 years?

A. Yes.

Q. Are not those consumers paying more for it than they ought to pay?

A. Yes, they would, if you take such a variation as that. I said they tended to counterbalance. The accrued depreciation on my basis would be higher, that is, on the 50 year life basis; therefore, there would be a greater subtraction from the cost, and they would not pay a return on so much money, so they tend to counterbalance.

2158 Q. What interests the consumer is whether he is paying a fair price for the gas, or for something he is not getting the benefit of. You are charging him for something he is not getting the benefit of.

A. Absolutely no. If he is not getting the use of this water gas machine that is being operated for his benefit, then the company should not have that machine.

By Mr. Ransom:

Q. You stated on page 2289 of the mimeograph record as follows:

"It seems to me that what the consumer has got to do is to pay enough in his rate to take care of the depreciation that accrues, and that the company has got to keep their books so as to set that up, so that when the property is retired for any cause whatsoever that fund can be charged with the cost of the property."

A. Yes.

Q. Now, is it a part of your theory of depreciation that it is the gas company's right to collect from the consumer, and the consumer's obligation to pay in advance, an amount necessary to cover the loss due to the retirement of each unit of plant and equipment as it is retired?

A. I don't know as I would state it just that way. It is my belief that the consumer should pay in his rate each year for that part of the life of each and every piece of apparatus that is used or held for his benefit.

Q. When you are fixing a rate for the future you say that there should be taken into account the fact that various units of plant

and equipment will be retired at various points in the future, isn't that so?

2159 A. Yes.

Q. And would you gauge the prospective time of the retirements of these units by the remaining portion of what you call unexpired life?

A. Yes, but I would also keep in mind and use the total average useful life. I cannot just take it on one end, and say, "Now here, there is only three more years life for the use of this thing, therefore I am going to make the consumer for those three years pay for that thing." Over the entire life of each of these items he should pay a proportionate part.

Q. So there will have been paid by the consumer in advance, over the period of the life of portions of plant and equipment, an amount which will cover the loss due to their retirement when they are retired?

A. I don't think that is just exactly truly stated. But there should be provided on the average during the life of each unit an amount sufficient to take care of the cost of that unit when it is retired, and that would be just the amount of the fund, theoretically, when it was retired.

Q. Now, let us see. Would you say that when a water-gas set was installed—assume that it had a life of thirty years from the moment that it was installed you would have the company begin to collect from the consumer in its rate 1/30 of its cost, would you?

A. Each year?

Q. Each year.

A. Certainly.

Q. Over its period of life?

A. Yes, if they put it into use at the beginning.

2160 Q. Creating during the 30 years a fund to cover the loss due to its retirement when it was retired?

A. To cover its cost.

Q. So that at the end of thirty years—assuming that this water gas set cost \$100,000, at the end of thirty years the company will have back the \$100,000?

A. Yes.

Q. Then the company uses this water gas set for another 20 years?

A. Then he is wrong.

Q. No, but you are guessing at the life?

A. No, there is a difference between a guess and an estimate.

By Mr. Ransom:

Q. Now, in other words, you would have this reserve set up from the very day that the water-gas set was in use?

A. Yes. Now, I am not drawing the lines to the very day.

Q. I do not mean the very day, but immediately?

A. Yes.

The Master: Say at the end of the first fiscal year?

The Witness: Yes.

Q. And it should be promptly reflected in the rate?

A. Yes, as they come and go.

Q. And the reserve should be promptly set up?

A. You ought not to have to take care of this, generally speaking, for each and every item of property as it is added.

2161 Q. I do not mean creating a separate reserve, but you would have a reserve covering all the property, which would include this water-gas set?

A. Yes, so that on the average it would take care of it.

Q. And against the reserve created out of the moneys thus paid by the consumers you would charge this water gas set, or its cost, when it was retired?

Mr. Neumann: I object to that on the ground that it is incompetent, irrelevant and immaterial, and a subject which is fully covered by the Uniform System of Accounts.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

A. Yes.

Q. So that you would always have in the reserve an amount representing the estimated accrual of depreciation in respect to each unit of property equal to the expired part of its life expectancy. That is, to make that concrete, in the case of a water gas set with a 30-year life, at the end of 20 years you would have in the reserve 20/30 of its cost?

Mr. Neumann: I object to that on the same grounds as last urged by me.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

A. Yes.

By the Master:

Q. Let me ask you this, Mr. Hine: Are you not on your theory really asking the consumer to pay for this plant, instead of paying a return on the investment?

2162 A. Absolutely not.

Q. What?

A. No.

Q. I can't get it any other way.

A. I am asking them to pay a return on the investment by this theory, and I am asking them also to pay for the use of that property that is used up in their service, that is, a return of investment at the time this property goes out of use. Here is what happens: Those funds can either be invested outside or in the company's own property. If the fund that is provided by the consumer is used to build up the plant, to make extensions, to add new mains, it means that the investment of the company is not reflected by the cost of the mains that they have, certain portions of them are taken care of out of these reserves.

Q. I would hate to go over to Flushing and explain that to the people of Flushing, if I followed your theory in arriving at a conclusion in this case.

A. I would feel exactly the same way if I followed the other theory.

Mr. Neumann: Perhaps the courts may adopt his theory, they probably have.

By Mr. Ransom:

Q. Mr. Hine, in your testimony on page 2289 of the mimeograph record, on your direct examination you said, "So that when the property is retired for any cause whatsoever that fund can be charged with the cost of the property." At some other place, and today, you have spoken of it as a reserve. Do you mean fund or reserve? Do you mean, or do you draw any distinction between a fund and a reserve?

2163 Mr. Neumann: I object to that question and move to strike out from it, "at some other place."

The Master: Objection overruled and motion denied.

Mr. Neumann: Exception.

A. I mean that the reserve should be charged with that. I do not mean that there should be a fund in cash kept on hand, or anything like, representing that reserve.

By the Master:

Q. Technically you would call it a reserve fund?

A. Yes, but it does not mean cash.

Q. It is a reserve fund?

A. Yes.

Q. You do not draw any distinction between the word "fund" and the word "reserve"? You use them together?

A. Yes. I may use one or the other unintentionally.

By Mr. Ransom:

Q. What you would have would be a renewal reserve account, or what you would probably call a depreciation reserve account?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial, and that subject is fully covered by the Uniform System of Accounts which they themselves have placed in evidence.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: A further objection is that the witness has answered that question previously. He has answered it again and again on the record.

2164 The Master: Objection overruled.

Mr. Tobin: Exception.

A. I would have a reserve account irrespective of what it was called.

Q. Well, it would be in effect a renewal account, wouldn't it, or depreciation reserve?

Mr. Neumann: I make the same objection.

The Master: Objection overruled.

Mr. Neumann: Exception.

Q. Well, it would be in effect a renewal account, wouldn't it, or depreciation reserve?

Mr. Neumann: I make the same objection.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. It would not be what I understand this company means by a renewal account. It would be an account which in my mind would take care of all the depreciation that had accrued on that property on the basis that I have outlined. Now, you can call it anything you wish.

Q. You would have a debit and a credit account of course?

A. Surely.

Q. And you would charge the expense account and credit the reserve account?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial, and covered by the Uniform System of Accounts.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. You credit this reserve yearly or monthly with whatever you take out of operating expenses.

Q. And you would charge your expense account which would be one of your subdivisions of operating expenditures, on the other hand, wouldn't you?

2165 Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial and fully covered by the uniform system of accounts.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. I would include that in the operating expenses.

Q. That is, you would have an operating expense account which you would call a renewal expense, or something of that sort, one of the subdivisions of operating expenses?

Mr. Neumann: Same objection as last urged by me.

Mr. Tobin: And further, if the Master please, I think it is decidedly unfair to continually pick at this witness along this line. He has answered these questions time and time again; and more than that, when Colonel Miller was on the stand the Master refused to allow Mr. Chambers to go into an examination of the same scope on cross examination, and I think it is unfair to this witness to go on along this line.

Mr. Ransom: We did not go into depreciation in our direct case.

The Master: I do not think it is unfair, and I do not believe the witness thinks so, either. Objection overruled.

Mr. Tobin: Exception.

A. I should say it should be put in there, I don't care what it is called.

Q. Now, your method of computing depreciation assumes, does it not, that a fund should have been created and should have been invested in plant and equipment?

2166 Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial and fully covered by the uniform system of accounts.

The Master: Overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

A. Not all of that.

The Master: It might be in Liberty Bonds, might it not?

The Witness: Yes, or they might have given it back to the stockholders. They should have created a fund, I believe, but that they should have invested it in the property or what they have done with it is different. My personal belief is that it should have been invested in the property.

The Master: Suppose there was no necessity for reinvestment?

The Witness: Well, that is a very peculiar case, that gas company. It was not this gas company. Then they should have returned it to the stockholders, I would say.

The Master: In other words, you would have the consumer paying into a reserve account a lot of money that the company did not need in order to give it to the stockholders of the company?

The Witness: I do not think that thing occurs at all, but here is the thing, that if the plant stops growing, or the gas company stops growing, or starts getting smaller, its consumers should have been paying something in there in the years past that would be returned to its stockholders so they can get their principal back.

2167 Q. In other words a company has an investment of \$100,000 in a water gas set, you estimate that in thirty years that water gas set is going to come out of it. If it becomes inadequate, it is wiped out and new capital investment is made in a new water gas set, if it is retired because of progress in the art and they put something else in its place, it is added to capital account? Your theory is that this cost of \$100,000 should be accumulated over the thirty years so that the \$100,000 can be repaid to the investors when the unit does go out of use?

A. No.

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial and presupposes a set of facts not testified to here, and contrary to the record at the present time.

The Master: Overruled.

Mr. Neumann: Exception.

Mr. Tobin: Exception.

The Witness: No, I say that during the life of that unit there should have been accumulated a reserve which will represent the cost of the unit, so that the integrity of the investor's dollar will be maintained all the time.

Q. Well, what should be done meanwhile with this amount which is accumulated?

A. Well, I think that if you would study the history of this company a little and see some of the things that they have done, you would find that the cry seems to have been: "We cannot get money," and that has been general, "We have got to make extensions and haven't enough."

2168 Q. Well, what should be done with it?

The Master: This would not cover extensions.

The Witness: Well, it would cover——

The Master: They would not have any right to make extensions out of this fund.

The Witness: I beg your pardon. That fund is money in the treasury of the company, and it should be, in my opinion, invested in the property, which would mean that that \$1,000 which is laid aside this year to take care of depreciation would buy \$1,000 worth of mains.

The Master: But they have to capitalize that main.

The Witness: Yes.

The Master: And they sell securities against it.

The Witness: They do not have to if they get it out of this fund, and they should not, and they do not, what is more.

Q. You do not believe this fund should be kept as a reserve intact, do you?

A. I think this fund should be kept as a reserve. I do not believe the cash should be kept there in fact, no, if that is what you are referring to.

Q. The cash could be used for the corporate business?

A. I think it should be used for corporate purposes, yes.

By the Master:

Q. Just to illustrate, suppose this company had \$140,000 on hand in the beginning of 1919?

A. Yes.

2169 Q. When they started the Douglaston Extension. You would say use that money for the Douglaston Extension, is that right?

A. Yes.

Q. And then they are entitled to capitalize that extension, aren't they?

A. I would say they are not entitled to capitalize that extension if that \$140,000 represented reserves of that description, absolutely no.

Q. Let us analyze that a minute. If this company, having put \$140,000 in that extension, came to the Public Service Commission for authority to issue securities against that, the authority would be granted, wouldn't it?

A. Well, in one case the company came to the Public Service Commission of this district and wanted that, and they said that they had

made so many extensions that cost so many dollars, and they had retired so much property——

Q. We are not talking about retirement?

A. Well, we will say there are no retirements.

Q. All right.

A. They say, "We have spent a million dollars for extensions in the last five years, and we want to be reimbursed for that," and the Commission analyzed it and said, "Now, here, during these five years you should have laid aside twenty-five or fifty thousand dollars, or whatever it was, for depreciation reserve, we don't need to reimburse you for that now because you do not need it, come back when you do need it."

Q. Well, suppose we use that \$140,000 for the Douglaston Extension?

A. Yes.

2170 Q. And when the time comes we have to replace the water gas set?

A. Yes.

Q. Where are we going to get the money?

A. Then is the time to raise the money and to capitalize it and reimburse your fund.

Q. Capitalize what?

A. You would capitalize the expenditures.

Q. Which expenditure?

A. Well, you have got to take this whole thing together. No-body capitalizes a certain extension of mains.

You have got to justify your capital extension, that is your increased issue of securities, by showing additional value in the plant, haven't you?

A. Yes.

Q. You have got to say that this movement into an extension like Douglaston, haven't you?

A. Not necessarily a particular extension.

Q. Including that?

A. Yes.

Q. That would be one of the items justifying an increased issue?

A. Yes.

Q. Then you would have to sell securities to replace the property that has gone out?

A. No; you would not do that; you would replace that fund; your company needs money at a certain time to buy a new water gas set, and you will sell securities against that Douglaston Extension to reimburse this fund, and meantime you do not need that money.

Q. What difference does it make, in theory, whether you do it immediately upon putting in the Douglaston Extension, or
2171 whether you need it for the other plant? In theory that Douglaston Extension is being paid for by additional capital?

A. I think it will make a great deal of difference if you ever come to the time when the company is not growing rapidly, or if anything happens to it.

Q. Just now I have to decide how much the consumer has to pay for his gas?

A. And I think that is the only way to decide it.

By Mr. Ransom:

Q. Let us take this instance, going right back to the water gas set, the way your theory works, Mr. Hine, the investors have put \$100,000 in a water gas set. At the end of twenty years, under your theory of depreciation, you have accumulated \$66,000 plus in this reserve on account of the approaching retirement, we will say, of the water gas set. They invest that \$66,000 in extensions of mains, when you figure the entire cost of the company's property, and your theory is in the first place that you should deduct from the \$100,000 which this water gas set costs the \$66,000, so that you withhold from the investors any return on that \$66,000, don't you?

A. Go on, I don't just take one point.

Q. You do that?

A. No, I cannot say that then. If that is all the premise you have, it cannot be answered.

Q. And in the second place, you say, you would not allow any return on the improvements built with this \$66,000, because it was built out of a reserve?

A. No, you are absolutely misstating my statements now, absolutely.

Mr. Neumann: What did you say?

2172 Q. If you deduct from your cost of property?

A. Total cost of mains and water gas machines and everything.

Q. If you deduct from your total cost of property the amount of your accrued depreciation, you have denied a return upon that much of the investment?

A. No, sir.

Q. And when you treat the Douglaston Extension as you do in this case, then you have deducted a return on that part of the investment?

A. No, I want to say that that is not so at all.

Q. Well, now, have you——

A. I want to answer that now, if that is a question put to me.

Mr. Neumann: Let him answer.

The Witness: It is certainly a misstatement of what I have said. What I say is that from the cost of the property you should deduct the accrued depreciation. Now, if that depreciation has been charged to consumers and it should have been charged to the consumers, the company would not have made the investment that was presented by the cost of the property that was built from that reserve, there would not have been any sacrifice on the part of the company. If we would take a case where the company started out and made an initial investment of \$100,000——

The Master: Let me give you another figure, to see where we arrive at. Take this \$100,000 water set for a minute——

Mr. Neumann: I object to the Master not permitting the witness to answer fully the last question, which is in answer to Judge

Ransom's question.

2173 The Master: Your objection is noted.

Mr. Neumann: I take an exception to your Honor's refusal to allow him to proceed with the answer.

By the Master:

Q. Take this \$100,000 water set, and let us assume now if we figure on the basis of a six per cent return, before there is any depreciation the consumer ought to pay \$6,000 a year for that \$100,000, ought he not?

A. Yes.

Q. And the next year you take off \$1,000, don't you?

A. Considering that alone, yes.

Q. That leaves \$99,000 on which the consumer has to pay 6 per cent?

A. Yes.

Q. That is \$5,940, isn't it?

A. All right.

Q. Is that right?

A. It would be a hundred years if you only take off \$1,000.

Q. How much should I take off?

A. \$3,333. Or we might make it simple by taking any arbitrary amount each year.

The Master: I just want to take this \$100,000 I am talking about.

Mr. Neumann: Take \$90,000 would be easier.

The Master: We will take \$90,000. The second year the consumer would be paying \$5,400 interest?

The Witness: Yes.

Q. The next year you are taking off how much?

A. \$3,000.

2174 Q. So then he would be paying on \$87,000, is that right?

A. Yes.

Q. Now, he has got to pay that \$3,000 that you have taken off, hasn't he?

A. Yes, he has got to pay that.

Q. Now give me six per cent on \$87,000?

A. \$5,220, I make it.

Q. And then he would have to pay that \$3,000?

A. Yes.

Q. So that he would be paying \$8,200 instead of \$5,400?

A. Yes.

Q. Is that correct?

A. That is what he would pay in total.

Q. And that would be included in his price for gas?

A. Surely, and should be.

By Mr. Ransom:

Q. Does your theory of depreciation assume that a fund should have been created and should have been invested in plant and equipment of the company?

A. My theory of depreciation assumes that that is the only way to do it, yes. That is the proper thing to do. That is true, fundamentally true, just the same whether or not any fund was created.

Q. Well, unless the fund created is invested in plant or equipment of the company, there would not be any reason for deducting, under your theory, the amount of accrued depreciation?

A. Yes, there would, just the same.

The Master: I think that you have covered this depreciation situation sufficiently, Judge. The minute Mr. Hine meets

my criticism of depreciation in the Consolidated case by coming back here with a suggestion that the consumer ought to pay in the manner he suggested, I think it destroys his testimony. That is my own judgment of it.

Mr. Cummings: His theory of depreciation is upheld by all the courts, very common. You can go counter to it if you like, but you show the result.

Mr. Neumann: Does your Honor claim that when a plant goes out of existence that the day it goes out of existence these consumers could pay the whole amount of the plant?

The Master: I am not here to contend; I am here to decide.

Mr. Ransom: The witness does not need any help from these men.

Q. Having created the reserve and having invested it in plant and property, how would you make the reserve available for the renewal and replacement of plant and equipment?

Mr. Tobin: If the Master please, that question has been answered.

The Master: I think so.

Mr. Ransom: I would like to have him answer it. He answered or hinted at it in an answer to that question.

The Master: I will let him answer this, although I think it has been fully covered.

The Witness: As I have stated before, at that time if there were no funds available, the treasury would have to be reimbursed for those expenditures.

Q. By the issuance of some form of securities?

A. Yes, something of that sort.

Q. That is, the investment representing the reserve would be capitalized?

A. No, I did not say anything like that.

Q. Well, isn't that what it means?

A. No, it is not. I should say that when the funds are needed you would provide them by issuing securities against construction work which had been done originally out of this fund, for the money set aside for this fund, just to reimburse the treasury on account of those expenditures.

The Master: I think we have had enough of it.

Q. Going back to some of the matters we were talking about when the Master raised this question about the effect on rates, going back to some of this physical property, isn't the works office building among those included in your first item on your Table 10?

A. Yes, I would say that is in there.

Q. The extension of this building is frame?

A. Yes.

Q. Why did you assign to it a life of fifty years?

A. I have assigned the same life there without any particular reason because of the fact that a majority of the building was a brick building.

Q. The fifteenth item on your Table 10 is a closet and basin at the works?

A. Yes.

Q. That is located in the works office?

A. I could not say for certain. I think so, yes.

Q. Well, how did you figure that this item of plumbing will survive the building in which it is included?

A. I do not. I have treated that these additions to buildings would tend to increase the life of the average building, they have all been treated that way.

Q. That is, you figured that that increases the life of the building?

A. Well, if you will just take that closet and basin at the works, I do not think it would, especially if you would look at it.

Q. Well, I fortunately have.

A. But there is this, Mr. Ransom. Any addition to a structure that is a reasonable addition would, in my mind, tend to increase the life of the whole over what it would have been otherwise.

Q. Well, how about the plumbing itself? Do you figure the plumbing can last fifty years and the building only twenty-five?

A. No, it would all come together there as part of the building, one building.

Q. And yet you have not so treated it?

A. It would be a weighted amount for the whole thing. No, I have not attempted to put those things in.

Q. On Sheet 12-A, storage equipment, you assume a life of twenty years for wax figures, signs and sink?

A. Yes.

Q. Why did you assume 20 years' life for the sink and 50 years for the closet and basin, any reason?

A. No. Because it was included in this account, was the principal reason.

Q. Isn't this sink cast iron?

A. I believe so. I don't know. I did not locate every one of these particular items to know which one it is.

Q. Don't you think a cast-iron sink will outlive a wax figure?

A. I have seen cast-iron sinks that did not.

2178 Mr. Tobin: If the Master please, this line of questioning is simply silly; there is no necessity for asking the witness these questions.

Q. That is all the answer you can give?

A. That is all based on averages. That particular wax figure might not last 20 years.

Q. Did you discover that the figures given for extensions in the generator house, exhaustor room, pump house, two-story coal bin, boiler house and compressor house, represent extensions of buildings which had been erected previous to 1904?

A. Yes, I would say that every one of those did.

Q. Well, if this be true, how can any of those items survive the remainder of the building of which they are a part?

A. The same answer I gave before in that line covers that.

Q. What is that?

Mr. Tobin: If the Master please, the witness has answered this before; he has answered four or five different times, and this is just simply lumbering the record, making more work for you to go through afterwards.

A. I have stated before that I have taken the probable life of the extensions as though they were a new building. These extensions, many of them, and separate rooms built on, they may outlive the rest of the structure, but you cannot tell what will happen, and I would say anyway that the addition to the building would tend to increase the life of the remainder, and that it would be a weighted amount. All of those buildings are gathered together at the works.

2179 Q. These additions to boiler house and generator house are additional rooms built on in the sense of extensions—they are an upper floor built on and roof, aren't they?

A. They may be; I could not tell.

Q. You don't know anything about that?

A. I could not tell just what was done. Certainly the boiler house was not an additional floor. They may have raised the roof.

Q. How do you figure the upper floor of the building will survive the lower floor?

A. I do not say that, as I said before, but I told you it will increase the life of the whole, so therefore that method of calculation is not unfair.

Q. Can you describe——

A. (Interrupting.) Not inconsistent.

Q. Can you describe the equipment represented by your item of "Electric line for conveyor"?

A. I think that expenditure covers a line of wire that runs down through the works, down toward the coal bin there.

Q. Do you know?

A. No, I do not definitely know that that is it, but there is an electric line that runs down through the yard that has been put in evidently in 1919, it seems to be a sort of a temporary construction. I believe from indications there that that was going to be a perma-

ment line, and that that was just an original stringing of the wire, I do not know.

Q. Do you know that this temporary installation which you have described is this item which you have dealt with as electric line for conveyor?

A. No, I say I don't know definitely.

Q. You assume a life of 20 years for this, whatever it was?

2180 A. Yes.

Q. Is 20 years your idea of temporary life?

A. I would say if that was built temporarily, or if the wires were strung up temporarily to be later fastened and put in as a permanent structure, that would be part of the cost of the permanent installation, and should be so treated.

Q. On what basis did you undertake to assign a 20-year life to this electric line for conveyor which you don't know what it is or where it is?

A. I think that is a fair life for electrical wiring, outside wiring.

Q. I notice that you set down an item here of 12 trees.

The Master: Twelve what?

Q. Twelve trees. What kind of trees were they?

A. I am certainly unable to state. They were included in Colonel Miller's summary, and while I did not find the trees, I thought that they were evidently planted in the yard.

Q. Did you ever look at them?

A. No, I did not.

The Master: What life did you ascribe to the trees?

The Witness: I just put the trees in there at 50-year life.

Q. You don't know anything about what kind they are?

A. No.

Q. You assume a life of 50 years for them?

The Master: How can trees be considered part of a manufacturing plant?

The Witness: Well, if they were connected in here, the trees planted on the property, the cost of those trees would certainly be a part of the cost of that property, and the trees that you
2181 have planted, you buy the land and then put the trees on it, and I know it costs you money and I know you have got to get it out of somebody else if you sell.

The Master: What has that got to do with making and distributing gas?

The Witness: Well, I would say if they put trees in there and got shade, the men might work a little better.

The Master: How did you figure depreciation on trees?

The Witness: I just took a 50-year life on those trees?

The Master: Well, don't trees generally improve with age?

Mr. Chambers: For a period.

The Witness: I have had them improve and then die.

The Master: I know I have got a lot of trees around my place in

Sea Gate that I think are better every year, and I spend a lot of money getting them better.

The Witness: I would say in a manufacturing plant a 50-year life on a tree would be pretty good.

The Master: Let's don't waste any more time on foliage.

Mr. Ransom: I referred to it only as illustrating the method or lack of method.

The Witness: I did not worry much about those trees myself.

The Master: I think the difficulty with this whole situation on depreciation is what we have been discussing this afternoon. It can't work out. Unless the consumer has to pay for it, the company is having its property taken away from it, and if the consumer is paying for it, he is paying more than he ought to pay, in my judgment.

Mr. Tobin: What would you do with the investment the owner has put in the property, destroy it for the sake of the consumer during its lifetime?

The Master: You are worrying about the public just now; don't worry about the stockholders.

Q. You testified at page 13429 of the record at the Consolidated Gas case that the average life of a water gas machine was 20 years, did you not?

A. I do not remember. I may have given some figure. I did not have any there. I was giving some rough estimates.

Q. Well, do you doubt that you did so testify?

A. No, I do not.

Q. I don't believe the estimates are any rougher than the present ones?

A. Well, that may be.

Mr. Tobin: I move to strike that out, there is no necessity for that kind of remark.

Q. (Reading:) "By the Master," page 13429, "Well, now, what do you consider the life of a water gas set and the boilers? The Witness: I should say on the average around 20 years."

The Master: Did you say that, Mr. Hine?

The Witness: So far as I know, yes.

Q. Do you say that now also?

The Master: Now he says it is 30 years.

The Witness: For this plant.

The Master: Water gas set.

Mr. Tobin: Water gas set.

Mr. Tobin: For this plant, he said.

Q. Didn't you know that the water gas sets in the 44th Street plant, to which you were applying that estimate, included water gas generators similar in size and kind and so on to those in the present plant?

A. I knew that they were similar in kind, as to whether they were the same size I certainly do not remember. But there were in the Consolidated case system Lowe water gas sets, U. G. I. sets.

Q. Well, owing to what circumstances do you attribute 10 years more life to the Flushing water gas sets than to those in 44th Street?

A. As I say, I had not prepared that; I was then answering that question as to rough figures offhand, without any information available, without any of my records available.

Mr. Cummings: Look at the record, Mr. Hine, if that will assist you. There may be some particular thing you have reference to.

The Witness: Oh, I remember it. In the Consolidated case we had no list of property and no estimate was made for each particular unit of property or class of property.

Q. You have assumed here an average life for a Terry steam turbine of 20 years?

A. Yes.

Q. Isn't it a fact that it is less than 20 years since the first Terry turbine was put on the market?

A. I could not say. I would judge so.

Q. Under such circumstances, how do you undertake to say that the life of a Terry turbine is 20 years?

A. Well, that is my estimate. I know one thing, that a great many of them have been replaced.

2184 Mr. Cummings: Under that same theory, you could not appraise a holder. They are a hundred years, you know, and Mr. Hine has not lived that long. I object to it; there isn't any man living that could appraise it under that theory, and that is absurd.

Q. Are you familiar with steam turbines?

A. Yes.

Q. Of what make?

A. Well, I have seen them run and set up and started to work.

Q. What makes?

A. Terry steam turbines and Le Laval.

Q. What makes are commonly used in driving blowers? What makes are commonly used for driving blowers and exhausters in gas works?

A. Why, the Terry turbine is probably used more than any other; at least I have seen it more.

Q. What is the other one you claim to know about?

A. De Laval.

Q. Which will last longer under the same duty conditions?

A. Well, I do not think they have the same duty conditions. I would say the De Laval would certainly not last as long, on the average, as the Terry.

Q. Which has the longer life, a steam turbine or the steam pipe and valves connected therewith?

A. I would say that the piping that belongs to the turbine should have, on the average, the same life as the turbine, because it would probably go out when the turbine came out, and a new header would

be put in when you put in a new machine or a new line for the machines from the old header.

2185 Q. With respect to these two Terry steam turbines, do you know that their cost was included with the cost of the 8 foot 6 water gas set?

A. I did, all except that item of \$141.51, which was some period, I think, in 1912. The Terry turbines were installed by the contractor putting in the water gas sets.

Q. And this item of \$141.51 is merely the cost of valves and piping?

A. I do not remember just what it was now, something like that, yes.

Q. Now, is this 30 years of life which you have assigned to the 8 foot 6 water gas machine a composite of the life of the water gas machine and of the turbine?

A. No, I took that as the water gas machine.

Q. Well, then, how have you given a 20-year life to the steam turbine?

A. I have only given it to that addition.

Q. To the \$141.51?

A. To the \$141.51. There is no separation of the cost on the other.

Q. So the effect is, you have given the turbine a 30-year life and the valves and pipe 20 years?

A. Well, that is what comes out there on that little machine.

Q. In spite of the fact that you say the valves and piping have the same life as the turbine?

A. Well, if the turbine was separate, that is the life I would give it.

Q. Can you describe a Fisher control governor, what it is used for at the Flushing works?

A. No, I cannot, that governor; I do not believe I saw it.

Q. You do not know what it does?

A. No, I don't know just what that one does.

2186 Q. And yet you have assigned a life of 33 1/3 years for it?

A. Yes, that \$19.25 governor. I believe it is a pump governor. There is a governor on the pumps, some of them.

Q. Do you know whether that item represents the entire governor or just an expenditure on the governor?

A. No, I don't know; not that one.

Q. And yet you have depreciated that on a 33 1/3 year life basis?

A. Yes.

Q. From what circumstances or conditions do you estimate the life of 33 1/3 years for such a governor or part of governor represented by this item?

A. Under the conditions existing there in Flushing.

Q. What do you know about this governor, anything?

A. No; I did not attempt to even find all these little items.

Q. Isn't it very much less than 35 years since the first Fisher Governor was built?

A. Very probably.

Q. Don't you know?

A. No, I don't know. I did not look up the Fisher Control Governor especially.

Q. At page 13,416 of the record in the Consolidated case you estimated the life of the shaving scrubber at 40 years, didn't you?

A. I do not remember. If it says so in the record I would assume so.

Q. Here you have estimated the life of a tar washer and tar extractor at 20 years?

A. Well, it is not a shaving scrubber by any means.

2187 Q. You have assigned a life of 30 years to the Babcock and Wilcox boilers at these works?

A. Yes.

Q. Didn't you testify in the Consolidated case that the life of such boilers was 20 years?

A. I do not remember. As I say, the testimony I gave there was offhand testimony, no estimates had been prepared for specific kinds of apparatus.

Q. Isn't it a fact that these Flushing boilers are about 120 horsepower each and of the same size as those you were dealing with in the various stations of the Consolidated Gas Co.?

A. About what?

Q. Are of the same size as those you were dealing with?

A. There were probably some of that size, and some larger. I do not remember any just that size.

Q. You have assumed in this case the life of a six-foot station meter as 40 years?

A. Yes.

Q. There are two such meters side by side at the Flushing Works?

A. Yes.

Q. One of them was installed prior to August 1, 1904?

A. I don't know whether it was or not, or whether it was included in the cost of that water-gas set. It is hard to tell.

Q. You did not even know that?

A. No, I cannot tell you.

Q. Could you tell by examination which of the two meters was the newer?

A. No, I cannot tell you, except I believe there is some—there may be a designation on them that would indicate, but not from the inspection, unless there is such a thing as that.

2188 Q. Has a larger exhaustor a longer life than a smaller exhaustor?

A. Well, that would depend on conditions.

Q. With respect to conditions such as those at this plant?

A. I would say generally speaking that with the commercial sizes there, if anything, that a larger exhaustor would have a longer life than a smaller one.

Q. As a matter of fact, there is a greater prospect of inadequacy terminating the career of a smaller exhaustor than a large one?

A. Yes.

Q. Now, you have assigned a life of 33½ years to the two No. 7 Root Exhaustors in your Table 11, have you not?

A. 33½.

Q. Yes.

A. I believe so, yes. I find one of them here.

Q. At pages 13,429, 30 and 31 of the record in the Consolidated Case, did you not assign a life of 15 to 20 years to the exhausters at the 21st Street station?

A. I do not believe that I—or as I stated before, I may have stated that. I do not remember just what I testified here; the figures, but those were not made up from estimates; they were offhand opinions on this, and it would be a factor to bear in mind in connection with the Consolidated that a great many of the exhausters would be used more than they are at the Flushing works.

Q. Oh, in order to determine the estimated life of property of this kind you have got to know and take into account the extent to which the property is used, or a particular unit?

A. To a certain extent, yes.

2189 Q. Consequently that involves the factor of its physical condition?

A. Oh, it would involve that, too, yes.

Q. And involves knowledge as to the extent to which it is used and the way in which it is used?

A. Yes, the way it is kept up, principally.

Q. Have you not assigned a life of $33\frac{1}{2}$ years to the 10 x 12 New York Safety Engine, and an age of $11\frac{1}{2}$ years?

A. Which page is that on?

Q. Sheet A, Table 11?

A. $33\frac{1}{2}$.

Q. Did you discover from page 22—this age of $33\frac{1}{2}$ years, that is $33\frac{1}{2}$ years of useful life, and the age of $11\frac{1}{2}$ years?

A. Yes.

Q. Did you discover from page 22 of Complainant's Exhibit 96 that when this engine was installed at the Flushing works in 1918 it was a second-hand engine?

A. Yes, I must have read it there, and I showed it, and I knew it was a second-hand engine from an examination of it and from other information that I received.

Q. Have you any idea how old that was when it was installed at Flushing, in 1918?

A. No, but I should say it was rather old.

Q. Have you assumed that this piece of machinery had been rejuvenated by removal and new reinsurance?

A. No; I imagine that one of the factors that entered into the other place it was used was that it was inadequate.

Q. Did you know that the manufacturers of that engine had been out of business in 1918 for a good many years?

2190 A. No, but I did know that another engine that had been at this company's place was removed and could not have been there prior to 1850.

Q. Now, this compressor on Sheet B of Table 11, one 8-inch by 12-inch by 8-inch compressor, didn't you discover from the books of the company or its vouchers on page 28 of Complainant's Exhibit 96, that this compressor was installed in 1908 and not 1918?

A. Yes, that is so, this was wrong in here, it should have been 1908, and the age should therefore have been eleven years.

Q. And your method of computing depreciation fails and breaks down whenever you make a clerical error in it?

A. No, the method does not do anything of the sort, the accrued depreciation would have been increased if that figure had been used.

Q. You have assumed eighteen years as the life of a gas holder?

A. Yes.

Q. In the Consolidated case you testified that seventy-five years was the life of a gas holder?

A. I thought I testified the average life of the gas holder station was seventy-five years, including the building and compressors and so forth, at that station.

Q. But in your Table 260 in the Consolidated case, where we applied this seventy-five year life, the entire property you dealt with at the 63rd Street station was a gas holder?

A. Yes, I believe that is an average life for a holder station, including everything at the station.

Q. Likewise at 14th Street and 65th Street stations, they were simply holders, principally?

A. 14th Street? Yes, a holder station. I applied it to the particular holder station in question and everything there, pump 2191 station and building and everything. At 66th Street I do not believe the Consolidated had a pumping station and boiler house; it belonged to another company. The 14th Street station the Consolidated owned the pumping station.

Q. You assumed an age of three years for the million cubic foot holder in Flushing?

A. Yes.

Q. Did you observe that most of the expenditures in the construction of this holder were during the year 1915?

A. Yes, at least the principal part of it, a very large part.

Q. Did you or did you not include depreciation on this holder for the year 1915?

A. No; I took three years there, as I did in all these; I tried to be careful not to get too low an age, depending on when it was put in, so here this is based on the assumption that it was finished and ready for use certainly not later than the end of 1916, and I do not know just when it was.

Q. Didn't you testify in the Consolidated case that you should begin computing depreciation from the time expenditures were begun?

A. No, I did not state that; I stated that I had; I did not say that you should.

The Master: Well, why did you?

The Witness: In that case I had to, because we did not have the information. The proper time to compute that is when it is put to use, of course. It would make a very slight difference.

Q. You had the same information in the Consolidated case 2192 that you have here,—the vouchers and books showing just when the expenditures were made—didn't you?

A. Well, you could not tell all those things, you could not obtain it.

Q. Didn't you say that you should begin computing depreciation on an apparatus before it even was put in service?

A. I do not think that I did, no. I testified that I had started computing depreciation in that case from the time the expenditure was made, as I remember now at this time. I certainly did not say the other.

Q. As a matter of fact, your Table 265 in the Consolidated case, your own tables, set out these facts as to the expenditures in the different years, didn't it?

A. Which table?

Q. Your Table 265 in the Consolidated case?

A. Why, yes, I believe that I just told you that I testified that that is what I had done in that case.

Q. Well, why did you do a different thing here from what you did there?

Mr. Tobin. If the Master please, the witness has indicated why.

The Witness: If I have not answered that, I cannot answer it any better.

Q. The charges to the 100,000 cubic foot holder, did you discover that that represented the installation of certain electrical apparatus, electric alarm?

A. Yes. I have forgotten just what it was, I think it was something like that, a very minor addition.

Q. You attributed to that electrical equipment eighty years, in connection with the holder. Can you state why this electrical equipment on a holder will last eighty years, while the electrical equipment in Table 10 you estimated will only last twenty years?

A. I have stated that in connection with units and additions to units that I have considered in every case that the addition would correspondingly increase the probable life of the unit.

Q. How did you arrive at the life of 50 years for the deep tar well, as you call it?

A. That was my estimate of the life of an underground tar well of masonry construction.

Q. Are you sure it is a tar well?

A. No, I am not absolutely sure. I did not get in it.

Q. You have depreciated it on the basis of a tar well.

A. Which item is that you are speaking of?

Q. The deep tar well, Sheet B of Table 11.

Mr. Villas: The fourth item from the bottom.

A. Yes, I would have put it on the same basis if it had been a water well, the same, or an ammonia well.

Q. Do you figure this is a tank or what—what kind of a—

A. I figured it was a masonry well. I took the longest. I do not know just what it was. I think it was an expenditure in connection with one of the large wells, but I do not know. You cannot identify

these expenditures, or I cannot identify these expenditures with the actual things, and I did not attempt to in the small items.

Q. Just how do you figure that a well of this type would depreciate; what happens to it?

A. Well, the thing happens if it is a masonry well, masonry
2194 disintegrates; for various reasons there are changes that occur in the yard that cause the removal of wells. They get too small and they use the space for something else. Those things happen all the time, that you are doing away with wells and doing away with other things because of changes in the plans and everything of that character.

Q. Except for termination of use through that factor, there is nothing else happens to it, is there?

A. I do not believe that the element of physical decay is so large there, if they are well maintained and kept pointed up.

Q. You did not find out that this was simply a water well, a driven well of the type commonly used on Long Island?

A. No, I did not know that this was a water well of that kind.

Q. A driven well?

A. Of any description, no. I assumed that this description was correct.

Q. You do not think this well would ever be pumped dry; you have not any basis for that, have you?

A. No; but I notice this—that a great many wells on Long Island are going dry, and in Brooklyn.

Q. How long have they been in existence?

A. I don't know.

Mr. Ransom: I think that is all.

The Master: Any redirect?

Mr. Tobin: Yes, your Honor.

Mr. Ransom: I should like to have gone into some further points along the line that your Honor opened this afternoon. I
2195 have deferred rather reluctantly to your expressed view in that respect that I have gone into it as far as necessary.

The Master: Depreciation?

Mr. Ransom: Yes.

The Master: Oh, I think you have covered it.

Redirect examination.

By Mr. Tobin:

Q. Mr. Hine, were you employed in the Public Service Commission at the same time that Judge Ransom was counsel to that Commission?

Mr. Ransom: Objected to as immaterial.

The Master: Objection sustained.

Mr. Tobin: I do not know, I think you have given great freedom, if the Master please, to counsel on the other side to go into every phase and situation that might possibly exist here as to this witness.

testimony, and immediately when we start to ask this question we are shut off.

The Master: You can take your exception.

Mr. Cummings: Well, we will. Ask another one.

Q. Are you acquainted with the different gas-making machines, Mr. Hine?

Mr. Ransom: Objected to as not redirect.

The Master: Sustained.

Mr. Cummings: Exception.

Q. Do you know from your experience, study and knowledge of the situation exactly how water gas is made?

Mr. Ransom: Objected to.

The Master: Objection sustained.

Mr. Cummings: Exception.

Q. Can you make it yourself if you have the machinery, the oil and the apparatus?

2196 Mr. Ransom: Objected to as not redirect examination.

The Master: Objection sustained.

Mr. Tobin: Exception.

Q. Could you step into a gas plant that was properly equipped and take charge and operate the gas machines to make water gas?

Mr. Ransom: Same objection.

The Master: Same ruling.

Mr. Tobin: Exception.

Q. Are you familiar with all the apparatus used in making water gas?

Mr. Ransom: Same objection.

The Master: Same ruling.

Mr. Tobin: Exception.

Q. You have made a study, have you, of the latest designs for making water gas—kept abreast of the times, have you, and of the machines for making water gas?

Mr. Ransom: Same objection.

The Master: Same ruling.

Mr. Tobin: Exception.

Q. Have you operated them yourself at some time or other in your career?

Mr. Ransom: Same objection.

The Master: Objection sustained.

Mr. Tobin: Exception.

Q. Have you seen them operated?

Mr. Ransom: Same objection.

The Master: Same ruling.

Mr. Tobin: Exception.

The Master: I am not going to let you qualify this witness now if you did not do it on direct.

Mr. Cummings: But he has attempted to destroy those
2197 qualifications, your Honor, by asking him in regard to his salary and so forth.

The Master: It does not make any difference. It is up to you to qualify him on direct examination.

Mr. Cummings: Well, we can do that further now.

The Master: You cannot do it now. It is getting too late in the night.

Mr. Tobin: We have been very patient as to the cross examination today and we are surely entitled to——

The Master: You have had the widest latitude to qualify the witness, and if the witness is not qualified on his direct testimony you are not going to do it now.

Q. You are acquainted with Judge Ransom, the counsel in this case, Mr. Hine?

Mr. Ransom: Objected to as immaterial.

The Master: Objection sustained.

Mr. Tobin: Exception.

Q. And you were associated with the Public Service Commission at the time that Judge Ransom was counsel to that commission?

Mr. Ransom: Objected to as immaterial.

The Master: Objection sustained.

Mr. Tobin: Exception.

Q. What was your position at the time Judge Ransom was counsel to that Commission?

Mr. Ransom: Objected to as immaterial.

The Master: Same ruling.

Mr. Tobin: Exception.

Q. Were you not a gas engineer connected with the Public Service Commission at the time Judge Ransom was counsel to that Commission?

Mr. Ransom: Objected to as immaterial.

2198 The Master: Same ruling.

Mr. Tobin: Exception.

Q. Were you not also used as a witness in various cases in which the Public Service Commission was a party, as a gas engineer, in which cases Judge Ransom acted as counsel to the Commission?

Mr. Ransom: Objected to as immaterial.

The Master: Same ruling.

Mr. Tobin: Exception.

Q. Were you not placed upon the stand in various cases, as an expert in gas cases, and interrogated by Judge Ransom as counsel to said Commission?

Mr. Ransom: Objected to as immaterial.

The Master: Same ruling.

Mr. Tobin: Exception.

Q. Were you not at various times and in various cases had before the Public Service Commissioners, in cases in which the Public Service Commissioners were parties, a witness and testified on the question of depreciation; and were you not interrogated on the question of depreciation by Judge Ransom, who was then counsel to the Public Service Commission?

Mr. Ransom: I object to this line of inquiry.

The Master: The same ruling.

Mr. Ransom: It is contrary to the fact, but it is just getting things into the record.

The Master: Anything else?

Mr. Tobin: In just a minute.

Q. The method that was adopted by Judge Ransom in these cases that I have referred to before the Public Service Commission, in which he was counsel—do you believe the method there used was the proper method for depreciation?

2199 Mr. Ransom: Objected to.

The Master: Objection sustained.

Mr. Ransom: And I never examined Mr. Hine on any such subject.

Mr. Tobin: Exception. That is all we have got.

The Master: Is that all?

Mr. Tobin: Yes.

The Master: We will excuse Mr. Hine. Is there anything else from the defendants? Have the defendants any further proof?

Mr. Tobin: No.

The Master: You are all through?

Mr. Tobin: Yes.

The Master: Do you rest?

Mr. Tobin: Except that we——

The Master: Where is Mr. Neumann?

Mr. Tobin: Mr. Neumann is not here.

Mr. Ransom: They previously announced that they were through.

Mr. Tobin: We do not ask you to act as counsel for the State and the Public Service Commission.

The Master: How about rebuttal now?

Mr. Ransom: I have a little rebuttal.

The Master: Do you want to finish it tomorrow afternoon?

Mr. Ransom: I would like to.

The Master: I had expected to go away tomorrow, but I will stay in town and finish this up tomorrow afternoon.

Mr. Ransom: Two o'clock or half-past one?

The Master: You had better make it two o'clock. Do you think it will take you over two or three hours?

2200 Mr. Ransom: I should imagine three or four hours. That is, my case, but if we start at half past one we will have that much more margin.

The Master: All right, we will make it half-past one.

Mr. Cummings: Is this a close estimate of the time, Judge?

The Master: I have not got my diary in mind, but I think I have tomorrow afternoon open. We will adjourn to half past one to-morrow afternoon.

Adjourned to Thursday, June 24, 1920, at 1.30 P. M.

Last Complainant's Exhibit 108.

Last Defendants' Exhibit A-111.

2201

NEW YORK & QUEENS GAS COMPANY

VS.

CHARLES D. NEWTON, &C, et al.

Before Abraham S. Gilbert, Special Master.

New York, June 24, 1920.

Met pursuant to adjournment.

Present:

Mr. Ransom, Mr. Vilas and Mr. Goetz, of Counsel for Complainant;
Mr. Chambers, Mr. Tobin and Mr. Cummings, of Counsel for
Defendant Newton.

Mr. Neumann, of Counsel for Defendant Lewis Nixon, Public
Service Commissioner.

The Master: Have the defendants rested?

Mr. Neumann: The defendant Nixon rests.

Mr. Cummings: So does the Attorney General.

MAYNARD H. SPEAR, recalled as a witness for complainant in rebuttal, testified as follows:

Mr. Neumann: I take it that the Court will confine the complainant to rebuttal.

The Master: That is a fair assumption.

Mr. Ransom: In connection with the defendants' proof on the question of candle power, and in rebuttal thereof, I offer in evidence the opinion adopted by the defendant Public Service Commissioner for the First District in its case No. 2235, on October 13, 1917, as reported in the official reports of the Public Service Commission
2202 for the First District, Volume 8, at page 255, and the following.

Mr. Neumann: Let me see it a moment.

Mr. Ransom: That being the opinion which was received in ev-

dence by your Honor in the Consolidated Gas case, and referred to at length in your opinion.

The Master: I only took the opinion after I took the order and as supplementary of the order, if you recall.

Mr. Ransom: I do not think you limited it in any way to that ground.

The Master: No, but that was my theory. You will remember at first I rejected the opinion, and subsequently the order was offered by the other side and then you offered the opinion and I took it.

Mr. Ransom: I always hesitate to doubt your Honor's recollection.

The Master: Well, don't hesitate, because I have thought of a good many things since then. I usually throw a thing out of my mind when I am through with it.

Mr. Ransom: The defendants, as I recall it, somewhat early in the complainant's case offered in evidence the order.

The Master: In the Consolidated case?

Mr. Ransom: Yes. Up to that time there had been no offer by me of the opinion. Subsequently in rebuttal, in connection with the question of candle power, I offered in evidence the opinion.

The Master: And I took it.

Mr. Ransom: And you received it.

The Master: Well, I am correct that I took the opinion after the order was in.

2203 Mr. Ransom: That is correct; but I believe there was no limitation of it to that ground, at least not so stated.

The Master: I did not so state, but that is the way my mind ran, rather than that I doubted the competency of the opinion as a separate piece of proof, but the order having been admitted I felt I was justified in taking the opinion as explanatory of the order.

Mr. Ransom: Well, here is the situation: The Commission here is a defendant, and it becomes an admission; they having raised the question of candle power, here are the official acts of the Commission with respect to a portion of this period. It happens that these acts were in part performed through the witness Hine, who has been on the stand, but in any event as against the defendant public authorities it was a part of the action of the Commission.

The Master: I see that this opinion includes the New York & Queens as one of the companies examined by the Commission or under its jurisdiction, for the purpose of determining the candle power.

Mr. Ransom: It does. I also call your Honor's attention to the fact that the order of the Commission in this case No. 2235, under which this hearing was held, is a part of the certiorari record in the Douglaston case, from which the defendants in this case have put in evidence various portions; in fact the order for hearing in case No. 2235 is already in evidence as Defendants' Exhibit O and the order adopted in connection with this opinion is a part of the same document.

2204 The Master: I will hear any objection.

Mr. Neumann: May I see it first?

The Master: Yes.

Mr. Neumann: Before making my objection to this, I would like to say to the court that there is a paper in this case No. 2235 that was introduced in evidence upon which this decision is based that I think would be competent if this opinion goes in evidence.

The Master: You mean there is some other paper in evidence?

Mr. Neumann: No, in this hearing, No. 2235, this record that he has brought here.

The Master: Well, that is another matter to be considered.

Mr. Neumann: Certain correspondence with the United States government, as I recall it, and there are certain recommendations that the Commission made with reference to a reduction in price.

The Master: Well, that is another matter that I will take under consideration. Just now I will hear any objection you have to the receipt in evidence of that opinion, which covers and includes a report or finding with reference to an investigation made under the auspices of the Commission as to the candle-power tests. On glancing at that opinion, I see that it refers to an investigation made covering 88 tests at the Flushing plant between January 1st and August 31, 1917, showing the results of those tests. In view of the plea of the defendant Public Service Commission that there was a violation of the statute, I am inclined to think that that opinion or report, practically, of the Commission, apparently establishing the 2205 contrary fact, ought to be received in evidence.

Mr. Neumann: I do not understand that this establishes a contrary fact at all.

The Master: It shows that for a period of six months the average candlepower was over 22.

Mr. Ransom: And that during the very period during which the defendants plead with reference—

Mr. Neumann (interrupting): No, it shows that the maximum was 23 and the minimum 20.

The Master: And the average over six months is 22.

Mr. Neumann: There were 88 tests taken.

The Master: I think it is quite clear from the record as it stands that the candlepower cannot be kept at a uniform standard, that it does fluctuate, and it goes up and it goes down, and the only basis on which to determine a violation of the candlepower requirement is an average over a period, and I think an average of 22 for a period of six months, tests made by the Commission itself, is a very forceful proof of the good faith of this company in this case, in any event.

Mr. Cummings: However the opinion of the Commission is accepted merely to dispute the correctness of the tests made by the City's inspectors, is that the idea?

The Master: I am receiving it, I do not know of any other proof here that is at all important in this case, but I am receiving it because I think it bears heavily upon the contention that there 2206 is no wilful violation, or not alone wilful but no regular violation.

Mr. Cummings: Well, then, you disregard the opinion of the Commissioner upon that fact; you simply accept the figures, and if

the figures prove to you that there was not any wilful violation, why that is all you care about?

The Master: Yes.

Mr. Cummings: Irrespective of the Commission's opinion.

Mr. Ransom: Here is the official action of the body charged by law, not what some city does under contract, but here is an official action of the body charged by law in behalf of all these defendants—

The Master (interrupting): I will hear any objection the defendants may have to it. I have expressed my views about it.

Mr. Cummings: Well, I object to it on the ground that it is incompetent, irrelevant and immaterial, and furthermore that it is a statutory regulation, it is a law fixed by statute and the opinion of the Commission upon the validity of such a statute is immaterial. They have no power to define or annul or limit in any way the law as fixed by the statute.

The Master: Is there anything you want to add, Mr. Neumann?

Mr. Neumann: No.

The Master: The objections are overruled, the table will be received in evidence.

Paper marked Complainant's Exhibit No. 109.

2207 Mr. Neumann: That is the whole opinion?

The Master: Yes, I am accepting the paper as offered. I want the stenographer to note in the record at this time, because I do not want to spend much time in an opinion by me on the subject matter, the following:

Mr. Neumann (interrupting): If the Court please, if you are going to read any part of this case, I must object to it on the ground that the whole opinion ought to go into the record, if anything, not extracts of it.

The Master: Well, you can read in anything else you want, but I want the record to show at this point, so that I can have it for ready reference, the following quotation:

"By authorization of the Commission, Mr. W. F. Hine, its Chief Gas Engineer, has established testing stations throughout the City and from January to the present time has supervised tests in those stations as well as secured the results of tests conducted in testing stations maintained by the City under procedure agreed to. The results of these tests down to and including August 31st (that means the year 1917), are set forth in Exhibit 1 herein, a summary sheet of this exhibit, as follows:"

The sheet is entitled:

"Tabulation of tests Made from January 1st to August 31st, Inclusive."

Referring to this particular company, the line is as follows:

"N. Y. & Queens."

The next column is "Testing Station, Flushing," the next general column is "Illuminating value in candles," and then the sub-
2208 columns are, "Number of Tests, 88, Maximum 23, Minimum 20.5, average 22.3," and the next four columns have to do with heating value in B. t. u.'s, with which I am not interested.

Mr. Cummings: I object to that on the ground it is incompetent, irrelevant and immaterial, and Mr. Hine is not an officer designated by law to make official tests under the statute. He may or may not be qualified. As a matter of fact I do not think he is a qualified gas inspector and does not pretend to be. The statute fixes the way it should be tested.

The Master: Overruled. Proceed.

Mr. Neumann: One moment, I want to look through this now and see if I want to read any other part right in here.

The Master: Well, you look it over a little later and read it in a little later on.

Mr. Ransom: Have you here, Mr. Neumann, Defendants' Exhibits O and P?

Mr. Neumann: I have not, but Mr. Cohen is on his way over here with them.

Mr. Ransom: Well, that is this certiorari proceeding. I have a copy of the same printed document.

Mr. Neumann: Well, if you say it is a copy, I will take your word for it.

Mr. Ransom: It is a printed copy. In connection with the portion of the certiorari papers which were placed in evidence by the defendants in their case, I offer in evidence the order of the Special Term of the Supreme Court, First Judicial District, allowing a writ
of certiorari, and the petition for writ of certiorari upon
2209 which the order for writ was entered.

Mr. Neumann: That is objected to on the ground it is immaterial, irrelevant and incompetent, and upon the further ground they are self-serving declarations.

The Master: But as I understand it, you offered in evidence other documents from the same record.

Mr. Neumann: I tried to offer the whole record, and it was objected to.

The Master: Yes.

Mr. Neumann: Then the Master compelled me to pick out certain parts and would only allow me to offer such parts as were declarations against interest by the complainants.

The Master: Yes.

Mr. Neumann: Now, those parts I offered. Now, these parts are not declarations against our interest, they are self-serving declarations made by this company, and since the complainants themselves objected to the introduction of their evidence in the original instance, I do not see how they can now offer them.

The Master: You will have to let me see what was offered before.

Mr. Ransom: Exhibit O was the resolution of the Commission. Exhibit P was an opinion of the Commission, Exhibit Q was Mr. Spear's affidavit, Exhibit S was the order of the Commission denying

the application for rehearing, Exhibit T was an order fixing the time for compliance, and Exhibit U was an opinion of the Commission denying the second application of the company for rehearing.

2210 Mr. Neumann: I offered each paper separately, and each paper was objected to.

Mr. Ransom: These orders of the Commission certainly are not declarations against interest on the part of the company; Commission's acts are not in that status.

Mr. Neumann: I am talking about your petition being a self-serving declaration.

Mr. Ransom: It certainly is explanatory of the papers which you put in evidence.

The Master: Well, are they?

Mr. Ransom: Very obviously, I should think.

Mr. Neumann: Why did you object to them in the original instance when I offered them? You cannot eat your cake and still have it left, you know.

Mr. Ransom: I was not in court that day.

Mr. Cummings: That is no excuse; you had a representative here.

Mr. Ransom: I assume that the objections that were made were sound, else they would not have been made, and certainly would not have been sustained.

Mr. Neumann: And the unsoundness of them is the fact that you are offering this.

Mr. Ransom: Then why are you objecting to it?

Mr. Cummings: The absence of leading counsel, you know, is not a very substantial objection, especially when you had Mr. Vilas here, let alone Mr. Goetz.

The Master: Were you offering the order?

Mr. Ransom: The writ and the petition for the writ?

2211 Mr. Ransom: Yes.

Mr. Neumann: That would compel an introduction of further papers again.

Mr. Ransom: The company is entitled to show the circumstances under which the judicial action was taken.

Mr. Neumann: Well, your affidavit shows that, your affidavit shows what you thought of at that time.

Mr. Ransom: The company has a right to show what the circumstances were.

Mr. Neumann: You said they were making a Hippodrome out of the Court.

Mr. Ransom: And I said also they are entitled to a fair rate.

Mr. Neumann: Yes, but you said they were making a Hippodrome out of the Court.

The Master: And I say this discussion is out of order, let's stop it. I do not think I can take this.

Mr. Ransom: The objection was made here the other day to the receipt of the exhibits which were offered in behalf of the defendant Commission that the statements of the Commission were not binding upon the complainant in this case. That objection was overruled and the documents were received. Now, if the defendant Com-

mission is entitled to spread at length upon this record as against this complainant its own version of the event, this complainant is likewise entitled to have upon the record here the papers upon which the action of the Court was taken, because whatever was done by this company was done under the protection of judicial decrees,

and we are entitled to show those decrees. No individual, 2212 no matter what his position—

The Master: Let me just go over this again. The resolution of the Commission directing an order as to standards and measurements of quality and power of gas is not specially important one way or another, is it?

Mr. Ransom: No.

The Master: It is simply the official act?

Mr. Ransom: That was the resolution in Case No. 2235, in which you just received the opinion.

The Master: Yes. Now, the memorandum—

Mr. Neumann (interrupting): And you say that was introduced in evidence at the prior hearing?

Mr. Ransom: Which, the resolution?

Mr. Neumann: By me?

Mr. Ransom: I so judge from my records.

The Master: The memorandum of the Commission adopted upon relator's refusal to accept order made may be questionable.

Mr. Ransom: That is already in evidence.

The Master: I may strike it out. I think I will strike it out.

Mr. Neumann: I must object to striking it out at this time, after it has been received and now that he cannot get in what papers he wants, you cannot strike out our exhibit from the record.

The Master: But I will, and allow you an exception. I will strike out Exhibit P. I think I was in error in allowing it in.

Mr. Neumann: Exception.

Mr. Cummings: Exception.

2213 The Master: I shall also reconsider my ruling as to Exhibit U.

Mr. Neumann: I call to the Master's attention that at this time there has been no application of this kind made by the complainant, this is solely on the Master's own motion.

The Master: Yes. Opinion denying the second application, in other words I am striking out opinions as distinguished from orders directing things to be done, and I strike out this Exhibit U. I think I probably went too far in allowing P and U in, which are opinions of the Commission.

Mr. Cummings: You are just letting in another one.

The Master: Yes, I am letting that in because it contains the statement of a fact.

Mr. Neumann: Well, those contain statements of fact.

The Master: No.

Mr. Neumann: Why, those contain the statements of fact as to what this Company was doing there, making a hippodrome out of the courts.

The Master: Very well, I may be in error about it, but that is going to be my ruling.

Mr. Neumann: There is no doubt about it that you are in error.

Mr. Ransom: If that is going to be done, then these papers ought to be stricken out physically from the record, because without any instructions from the Court, that I know of, those documents were physically printed in the minutes.

2214 Mr. Neumann: No, those being in the record and now being stricken out, they cannot be physically stricken from the record. The Court must have those before them to determine whether they are properly in or out.

The Master: The Master will direct that they be physically stricken out, but they can be marked for identification under the same exhibit number as they now have.

Mr. Neumann: To which I except.

Mr. Cummings: Exception.

The Master: I shall sustain the objection to the offer made by Judge Ransom of the petition for a writ and the order of the Special Term allowing the writ of certiorari, allowing him an exception.

Mr. Ransom: And I offer separately the order for a writ.

The Master: That is the same objection, I suppose?

Mr. Neumann: Same objection.

The Master: Your objection is sustained, and exception allowed.

Mr. Ransom: I offer to show from the various orders of the Court which were made in the course of this litigation—

The Master (interrupting): I will change my ruling again. I will allow the order in to show there was a certiorari proceeding. I will allow the order of the Special Term.

Mr. Neumann: Now, this is a confused state of the record.

Mr. Ransom: That is the second certiorari proceeding, this second order.

The Master: I don't care which one it is, an order of the Court I will allow. Which one is it? Identify it and have it marked.

2215 Mr. Ransom: It is the order printed on page 47 of the document from which the defendants' Exhibits were taken.

The Master: That is the order to which the objection runs, and the objection is overruled and it will be marked.

Mr. Neumann: I want to get clear which exhibits have been stricken out.

Order marked Complainant's Exhibit No. 110.

Mr. Neumann: So that the record may be clear, the reason they are stricken out is not by reason of the fact that the original papers were not offered?

The Master: No. They are stricken out because I think they are irrelevant and incompetent.

Mr. Neumann: All right, then; I take an exception.

Mr. Ransom: May the petition upon which this order was entered be marked for identification?

The Master: Yes.

Marked Complainant's Exhibit No. 111, for Id.

Direct examination.

By Mr. Ransom:

Q. Mr. Spear, in connection with the testimony offered by the defendants upon their case, and the request made of you by the Master at that time, have you prepared a detailed statement showing the cost of land acquired by the New York & Queens Gas Co. from August 1, 1904, to December 31, 1919, and computed the price paid therefor in cents per square foot?

A. I have.

2216 Mr. Neumann: Computation so far as the cents per square foot is concerned only?

The Master: You need not answer. Go ahead.

Q. And have you also upon this tabulation shown what would be the cost of the land acquired before August 1, 1904, if you applied the same unit price per square foot which is the average unit price paid for land acquired since August 1, 1904?

Mr. Neumann: Objected to on the ground it is immaterial, irrelevant and incompetent, purely speculative, based upon hypotheses, not based on any judgment or knowledge of the witness but a pure computation.

The Master: Overruled.

Mr. Neumann: Exception.

Mr. Cummings: Exception.

A. I have.

Q. And this is such statement?

A. It is.

Q. Known by you to be correct?

A. It is.

Mr. Ransom: I offer it in evidence.

Mr. Neumann: It is objected to on the ground it is incompetent, irrelevant and immaterial, not clear, not definite, very vague, it does not identify the parcels in any way so that they can be checked up, the exhibit itself states Plot A so much, Plot B so much, and so forth, nothing showing the description of the property, nothing whereby it can be identified.

Mr. Ransom: Most of these parcels have already been identified, and I have a map that I shall offer as the next exhibit which brings together all of the identifications.

Mr. Neumann: No foundation for the introduction of this exhibit.

The Master: Overruled.

Mr. Neumann: Exception.

Mr. Cummings: And also disputes other exhibits put in evidence by the complainant.

Paper marked Complainant's Exhibit 112.

The Master: As I recall it, I announced that I thought that the figure for the land ought to be about \$44,000. I see that my figures

are pretty close to what it figures out in the way just described by the witness. That land was bought a good many years ago, prior to 1904.

Mr. Ransom: On the basis of the Halleran figures, of course.

The Master: It would be \$55,000.

Mr. Ransom: On the basis of its present value, of course on the basis of the Halleran figures it would be 24 plus 18.

The Master: That is 42?

Mr. Ransom: Yes, that is as the original cost of the land.

The Master: And I said that I would hold you to—

Mr. Ransom: No, it should be 44, that is right.

The Master: Well, that is the figure I will stand by, I think that is about fair. This rather confirms the figure than otherwise, that they may have bought it for a few thousand dollars more or a few thousand dollars less.

Mr. Ransom: On this basis, of course, it would be \$47,000, 218—but on the basis of the Halleran figures plus cost of land acquired since 1904, it would be \$44,000 as the original cost.

The Master: I think I have hit a pretty fair figure as to original cost and value of \$44,000.

Mr. Ransom: I think that you should find also the undisputed facts of the case that the present market value of his land is \$55,000.

The Master: Yes, I think I shall have to, there is no dispute about it, there is no witness who has been brought to the contrary, but I shall report the probable cost of approximately \$44,000, and the fair value prior to the war at about \$44,000 and that the undisputed proof of Halleran, no one having been called to contradict him—

Mr. Cummings: You forget our Deputy Tax Commissioners.

The Master: Yes.

Mr. Cummings: So you must not say it is undisputed.

The Master: Yes, I think that raises a dispute. I think that I am going to let it stand at \$44,000 as the present value.

Mr. Ransom: Well, I do not see how you can find that is the present market value.

The Master: Well, I think I will let it go at that.

Q. In connection with Complainant's Exhibit 112, did you also on the Master's request, Mr. Spear, prepare or have prepared under your direction, a diagram showing each of these parcels of land by letters and showing from whom each parcel was acquired and just where each such parcel is located within the plant?

A. I have.

119 Q. And this is such diagram?

A. It is.

Q. Known to you to be correct?

A. It is.

Mr. Ransom: I offer it.

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial. This witness has not shown any qualifications for drawing any diagrams or anything else—no foundation laid for this.

The Master: Overruled.

Mr. Neumann: There is certainly not any foundation laid for it. He had it prepared under his direction, but that does not mean anything.

The Master: Overruled. It is a very unimportant document, simply a general sketch showing the general layout of the ground; and it is not intended to be precise or accurate, but simply gives me a general picture of where these lots are, and I am taking it on that theory.

Mr. Neumann: Exception.

Marked Complainant's Exhibit 113.

Mr. Neumann: If the Master thinks that in a rate case, where they are required to prove this beyond a reasonable doubt, this testimony is sufficient, that is the Master's responsibility, not mine.

The Master: Yes, I think the important thing in these rate cases is, perhaps, to resolve doubts against the complainant company, and that is why I have reached the conclusion that I will not take the testimony of Mr. Halleran, in the light of the deputy tax commissioner and in the light of the reports made by the company itself. I am therefore resolving the doubt against the complainant company in that respect, and I think \$44,000 is a fair value before the war. I think that as a matter of judgment on the disputed testimony it probably is pretty nearly right now.

Mr. Neumann: And that in the face of their own exhibit, showing a lower figure.

The Master: No, their exhibit shows \$44,000—their report to the Tax Department.

Mr. Neumann: Before we get through with this witness we will show you the exhibit that we have in mind.

Mr. Ransom: And the testimony of the only real estate man who has been called to the stand with respect to values at the present time is that it is \$55,000.

The Master: No, you have got to have in mind the deputy tax commissioner.

Mr. Ransom: Not at this time.

The Master: Yes, in 1919. I think I will stand before the Court on that.

Mr. Neumann: To which, of course, we do not assent.

The Court: Of course, neither side is satisfied with it. We must have some logical figure somewhere.

Q Mr. Spear, in connection with the opening entries of the books of the New York & Queens Gas Company in 1904, that have been placed in evidence by the defendants, have you produced the minutes of the opening meeting of the board of directors of the New York & Queens Gas Company in 1904, also a complete and correct excerpt and transcript from the minutes of the meetings of the board of directors of the company on the respective dates shown?

2221 Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, not within this witness' province to so testify. The present state of the record indicates that this

witness was not with that company at that time. The secretary of the company and the one who kept the minutes should be the one to be produced, and the original minutes should be produced and not extracts.

The Master: Let me see the minutes. (Takes paper from Mr. Ransom.)

Mr. Ransom: The original minutes were here, and I understood it was agreed the other day when you used one of these——

Mr. Neumann: I agreed that day so as not to call Mr. Raynor down, but I did not agree you should not produce your book. I wanted to accommodate and I will not do it again, in view of that fact. If concessions that I want to make in order to assist them are going to be used against me in a trial, I shall not make another concession.

Mr. Ransom: There is no effort to use anything against you. The original minutes are here. I am offering the certified copy, certified by the secretary, only for convenience.

The Master: These are the minutes of the New York & Queens?

Mr. Ransom: Yes, sir. In other words, it is the underlying data on entries which the defendants have placed in evidence in their case, based upon a theory of the case which they follow but not the complainant. It is offered in rebuttal on that theory.

2222 Mr. Neumann: How is it Mr. Cohen could not obtain those minutes when he asked for them, if they are in existence?

The Master: I have on the record the fact that Henry R. Wilson was the president of the Newtown & Flushing Gas Company in 1913, likewise in 1914, and of the New York & Queens——

Mr. Ransom: In 1903 and 1904.

The Master: Yes, 1903 and 1904, and of the New York & Queens after the purchase from the Newtown & Flushing. Have I not?

Mr. Neumann: Wilson? I do not recall Wilson.

The Master: Oh, no, he was a director.

Mr. Neumann: I do not recall Wilson.

Mr. Ransom: He was not the president of the New York & Queens.

The Master: Who was the president?

The Witness: Mr. Tilford.

The Master: Yes, Mr. Tilford.

Mr. Ransom: The first president of the company——

The Master: Of the New York & Queens?

Mr. Ransom: Of the New York & Queens——

The Master: It was Tilford, was it not?

Mr. Ransom: It appears to have been Charles Thomas.

The Master: Charles Thomas was vice president, I think, when that 1904 report was made.

Mr. Ransom: Well, he was vice president of the Newtown & Flushing very early after the New York & Queens began business.

2223 The officers who have been elected upon the preliminary organization, various of them retired, and Mr. Tilford succeeded Mr. Thomas as president of the company. Mr. Thomas was elected president on the 13th day of July, 1904.

Mr. Neumann: I do not know whether that is so; and if it is so it ought to be susceptible of proof, not counsel's statement in the record here, creating an atmosphere.

Mr. Ransom: I have now offered the proof as to these bonds.

The Master: You produce the original minute book, do you?

Mr. Ransom: I do.

Mr. Neumann: What part do you offer?

The Master: Do you question the fact that that is the genuine original minute book.

Mr. Neumann: If he will let me look at it for a minute I will tell you whether I do or not. I cannot tell from this distance.

Mr. Ransom: I do not want a general roaming through the book, only with respect to the opening entries.

The Master: He will not do that.

Mr. Neumann: All I want to do is to satisfy myself that this is the original book, that is all.

Q. Do you know whether it is, Mr. Spear?

A. It is.

The Master: From appearance it would seem to be a rather ancient document.

Mr. Neumann: Is this the first book of this company?

Mr. Ransom: It is.

2224 Mr. Neumann: And the book that is being used now?

Mr. Ransom: No.

Mr. Neumann: Where is the book that is being used now?

The Master: That is not the question I want you to discuss now, Mr. Neumann.

Mr. Neumann: I want to be sure that I am being given the book containing the minutes of the Board of Directors. That is what I want to be sure of.

The Master: I simply ask you whether there is any question about that being the original book, the first book used, containing the opening entries.

Mr. Neumann: How can I tell that?

The Master: The witness says it is.

Mr. Neumann: I cannot tell it.

The Master: The witness swears it is.

Mr. Neumann: One moment. The Master must take into consideration this fact—that at that time this witness was not with that company.

The Master: That may be.

Mr. Neumann: How he can swear that was the book at that time, when he was not there, probably used four or five years prior to the time he came there, is more than I can understand.

The Master: I think it is satisfactory proof.

Mr. Neumann: Exception.

The Master: Taken in conjunction with the book itself, it is satisfactory proof.

Mr. Ransom: I offer in evidence the minutes of the first
2225 meeting of the Board of Directors, being also all the incorporators, held on the 13th day of July, 1904; the minutes of the special meeting of the Directors—

Mr. Neumann: One moment. Now you are offering one and I want to look it over.

The Master: What pages?

Mr. Ransom: That is comprised on pages—well, I will offer a copy of the certificate of incorporation which appears in connection with the minutes, that which appears on pages 1 to 3, and then the minutes of the first meeting appearing on pages 6 to 11, both inclusive; then the minutes of the meeting of the stockholders on the 15th day of July, 1904, appearing on pages 12 and 13; the minutes of the special meeting of the directors of the company held on July 18, 1904, appearing on pages 14 and 15; the minutes of the meeting of directors on August 3rd, 1904, pages 16 to 19. I think that is all.

Mr. Neumann: Now I want to look at them.

The Master: Look at them down to page 19.

Mr. Neumann: Down to page 19?

The Master: Yes.

Mr. Neumann: You did not offer them including page 19?

Mr. Ransom: I think I did.

The Master: Yes, it includes page 19.

Mr. Neumann: This is objected to on the ground it is incompetent, irrelevant and immaterial, not properly proven, not properly shown to have been the minutes of the meeting of the Board of Directors; that the book is offered and a person is offered who introduces it, to whom no cross-examination can be directed 2226 to determine whether the book is the book, or whether the book is the book that was in use at that time, or whether the statements therein set forth contain a true and accurate and correct account of the meetings that it purports to set forth.

The Master: Do I understand that to be an application for leave to cross-examine Mr. Spear?

Mr. Neumann: What is that?

The Master: Am I to understand that you want to cross-examine Mr. Spear?

Mr. Neumann: No, quite the contrary. Mr. Spear was not the man who took these minutes.

The Master: Then you do not want to cross-examine him?

Mr. Neumann: Why, that is not the question now.

The Master: You said something about not being permitted to cross-examine him or not being able to. I did not want an inference on the record that I am preventing you from cross-examining him.

Mr. Neumann: No, the record is quite clear. I stated exactly what the facts were, that they were introducing them through a person who had not kept them, and thereby we are deprived of the right of cross-examining him.

The Master: No, you are not deprived of it.

Mr. Neumann: We are. I do not see how else the Master can figure it.

The Master: I will not deprive you of the right to cross-examine.

2227 Mr. Neumann: If the book is introduced here through a person who did not make it, I say that the defendants are deprived of the right to cross examine the person who kept the minutes.

The Master: We will not argue the meaning of the word "deprived." I understood it to mean to keep or take away some right. The objections are overruled. They may be received in evidence.

Mr. Ransom: May we mark the certified copy instead of the original?

The Master: No, mark the first page of the original.

Marked Complainant's Exhibit 114.

The Master: As I understand it, Judge, that record shows that Mr. Wilson, owning all of the stock and all of the bonds of the Newtown & Flushing, consisting of \$300,000 of common, \$300,000 of bonds and \$50,000 and odd of preferred stock, sold that company to this New York & Queens Company for all of its capital stock—

Mr. Neumann: One moment: I do not think that that is what the shows.

The Master: Then let us see if I read it correctly.

Mr. Ransom: Of course, it does not say that Mr. Wilson on July 12, 1904, owned all of the stock and all of the bonds. It says that he offered to sell and deliver.

The Master: Well, he could not afford very well to sell and deliver unless he owned them prior to—

Mr. Neumann: Why couldn't he, as a broker?

2228 Mr. Ransom: He could; he had to be in a position to get it.

The Master: I do not think that changes what is in my mind.

Mr. Ransom: He may not have owned a share of it.

Mr. Neumann: In the first place I want to place an objection on the record right here to the Master reading into the record now his own interpretation of this exhibit. The exhibit speaks for itself.

The Master: All right. The people who owned all the stock, common and preferred, and the bonds, of the Newtown & Flushing, as a result of this deal, became the owners of all of the capital stock of the New York & Queens, did they not?

Mr. Ransom: All of the entire authorized capital stock.

The Master: And \$650,000 of bonds.

Mr. Ransom: Of bonds.

The Master: Isn't that so?

Mr. Ransom: That is correct.

The Master: So that those securities issued by the New York & Queens Gas Company were precisely of the same value as the securities which they got, were they not?

Mr. Neumann: No, they were not. They were \$600,000 less.

The Master: I am talking to Judge Ransom, not to you, for a minute. The aggregate of all the stocks and bonds paid for the aggregate of all of the property represented precisely the same thing.

Mr. Ransom: \$300,000 common and \$50,000 preferred.

2229 Mr. Neumann: I cannot quite follow that.

Mr. Ransom: And \$300,000 of bonds.

The Master: Maybe I can make it clear to you. All of the se

curities of the Newtown & Flushing represented in value the value of the Flushing plant, did they not?

Mr. Neumann: I don't follow that at all.

The Master: Then I will have to ask Judge Ransom; maybe he can follow it.

Mr. Neumann: Suppose the company was overcapitalized?

The Master: I do not care how much overcapitalized it was. All the securities standing out, owned by a company, are worth precisely what the property represented by those securities is worth, no more and no less.

Mr. Neumann: But the property may not be worth anywhere near the securities issued.

The Master: Did I say it was?

Mr. Neumann: That is the point.

The Master: Did I say it was?

Mr. Neumann: That is what I understood you to say.

The Master: That is why you do not understand me; you do not get my point. Do you get it, Judge?

Mr. Ransom: I do.

The Master: How am I to determine the value of the property by reason of that transaction? I cannot fix it at \$1,250,000 just because that was the figure placed on it in par value of securities, can I?

Mr. Ransom: Well, the sale was for \$1,250,000.

The Master: In securities?

2230 Mr. Ransom: \$1,250,000, payable in a certain way.

The Master: In securities.

Mr. Ransom: Yes.

The Master: I take it that it is reasonable for me as master to have in mind the securities of a par value are not necessarily worth that, par, even though men are willing to deal with it in those figures.

Mr. Ransom: It becomes a matter of evidence. For example, right at this time it appears that the treasury bonds were sold at par.

The Master: I do not think it shows that.

Mr. Cummings: There is no evidence of that.

The Master: It does not show that, Judge. It says he can sell it—Oh, yes, at par, I beg your pardon.

Mr. Ransom: And that, of course, is as to the bonds.

The Master: Yes.

Mr. Ransom: And, of course, as to the stock. The statutory provision—

The Master: I know the statute; I have organized a few companies in my day and I know all about present value for the purpose of issuing stock. What I wanted to get clear is this: I took this evidence—this record in evidence because I wanted the record to show just what was done, and I thought it was well to have it in the record.

Mr. Ransom: That is what I want, and that is the reason why I offered it.

The Master: I do not think it makes any difference one way or the other. But I have been puzzled right along and I have
2231 been waiting for the opportunity to draw out your view as to how I am going to determine what the New York & Queens actually paid for this property, assuming, as I always have assumed from what I have heard before, that they paid \$650,000 in bonds, as

to which you are justified in the contention that a sale of \$50,000 at par would indicate they were worth par, making it \$650,000, and what the value of the stock was. Now, that is what is bothering me.

Mr. Ransom: Well, I think there is evidence with respect to one of these reports.

The Master: Made by you?

Mr. Ransom: No, which has been placed in evidence as a defendant's exhibit, showing quotations at 90, or more.

The Master: At 90 for bonds?

Mr. Ransom: Stock.

The Master: I do not think so—for bonds. I think it referred to bonds.

Mr. Cummings: It slumped off a little bit.

Mr. Ransom: I am not sure.

Mr. Neumann: Perhaps complainant's counsel would like to explain how the Franchise Account from 1904 jumped from 469,107.3, if the bonds represented tangible property of that value.

The Master: Well, the stocks and bonds both represented tangible property.

Mr. Neumann: I will say what I said the other day, any finding made on that will be like Mahomets' Coffin, suspended in the air without any visible means of support.

2232 The Master: You have what I had in mind, Judge, go ahead.

Mr. Ransom: I think under all the circumstances, and we offer Col. Miller's testimony showing cost of property down to that time which is still in use—

The Master: I have got Col. Miller's, I think, a figure that Mr. Hine agreed to, of two hundred and some odd thousand dollars for tangible property, excluding land.

Mr. Neumann: Both agree on the sum, except that they disagree on the question of depreciation.

The Master: Yes.

Mr. Neumann: Colonel Miller's figure is without depreciation and Mr. Hine has figured it with depreciation.

The Master: I do not disagree with myself on depreciation.

Mr. Neumann: I do not want any confusion in the record.

Mr. Ransom: Also, of course, you have the record on both sides as to those tangible you have to add certain structural overhead for which Colonel Miller gave certain figures and as to which Mr. Maltbie and Mr. Hine gave certain figures.

Mr. Neumann: We have analyzed all that on Exhibits 11 and 12.

The Master: Do not interrupt, Mr. Neumann, but go ahead with Mr. Spear; it is not quite so simple as the Consolidated case, where we had a basis to work from.

Mr. Ransom: It is not.

Q. Mr. Spear, in connection with the testimony of the witness Cohen on June 3, 1920, his Schedule 10, Defendant's Exhibit 2233 A-20, and the inferences which he undertook to draw therefrom, have you prepared a schedule in the same form as

Defendants' Exhibit A-20, but showing the revenues and expenses of the complainant company during the first five months of the year

1919 and 1920, in accounts of cents per thousand cubic feet of sales?

A. Yes, I have.

Q. You have that with you?

A. Yes, it is right in that package there (indicating).

Q. This is such statement, as so prepared (indicating)?

A. It is.

Mr. Ransom: I offer it in evidence. If there is no objection I will be willing to mark the printed copy which was furnished to the defendant some time ago.

Mr. Neumann: What is that; what was that last statement about furnished to the defendants some time ago?

The Master: Some time ago, a printed copy of it.

Mr. Ransom: A week ago.

Mr. Neumann: To whom did you send that?

Mr. Ransom: To all the defendants.

Mr. Neumann: You did not send it to me.

Mr. Ransom: I am sure I did, with an affidavit annexed to it.

Mr. Neumann: With an affidavit of whom?

Mr. Ransom: An affidavit of Mr. R. A. Carter.

Mr. Neumann: In one of the books of the other companies?

Mr. Ransom: In one of the other cases.

2234 Mr. Neumann: You are talking about another case now?

Mr. Ransom: I am talking about a schedule which was furnished.

Mr. Neumann: In another case?

Mr. Ransom: In another case, not in this identical case.

Mr. Neumann: In another case?

Mr. Ransom: Yes, not in this case.

Mr. Neumann: Why didn't you say that at the start?

The Master: Do not get into this discussion. This is taken from the books, Mr. Spear?

The Witness: It is.

Q. It is in the same form as Defendant's Exhibit A-20?

A. Yes.

Mr. Neumann: I object to it on the ground it is incompetent, irrelevant and immaterial. Part of a year is not a proper basis. The complainant put in the first exhibit for part of a year and we matched him, and now he is coming back.

Mr. Ransom: In this case?

Mr. Neumann: In this case.

Mr. Ransom: Oh, no.

Mr. Neumann: You put in part of a year and we showed it to you.

Mr. Ransom: We showed the cost as of a given date, but that was not the cost for three months or five months.

Mr. Neumann: For part of a year.

The Master: Finish your objection.

Mr. Neumann: That it has not been shown to be correct; on the

2235 further ground that the underlying data on which it is based is not here, that there are no details shown. It deals with figures without showing how they are arrived at, and is not a safe basis for the Master to form any judgment on.

The Master: The objections stated are overruled.

Mr. Neumann: Exception.

Marked Complainant's Exhibit 115.

Q. Mr. Spear, you have in court the 1920 books covering gas operations to the end of May, 1920?

A. Yes, I have.

The Master: Well, they are the same books that were marked in evidence, are they not?

Mr. Ransom: Yes, and I would just like the record to show that they are considered in evidence. The same books were used for 1920.

The Master: Yes, the entries are being made in them since they were marked in evidence, so that the entries are being made in them right down to date.

The Witness: That is right.

Mr. Neumann: One moment. I do not remember that the books for 1920 are in evidence, and I do not think they were offered in evidence. I do not see how the Master can rule in evidence books that were not offered.

The Master: I am not. The vouchers, the operating books, beginning with January 1, 1919, are the same books that are not being used, as I understand it?

The Witness: They are.

Mr. Neumann: Isn't there a new book in 1920?

2236 The Master: I do not understand so.

Mr. Ransom: The books were in evidence down to May

25th.

The Master: But it is the same book.

Mr. Ransom: The same book.

The Master: You did not open a new book in 1920, did you, Mr. Spear?

The Witness: No.

The Master: It is the same book.

Mr. Neumann: As I recall it, the book I examined here ran down to the end of 1919 and had no 1920 entries in it, and the book was in court.

The Master: Have you got it here?

The Witness: Yes.

The Master: Let us have a look at it and we will settle that. Let us see the operating journal, for instance.

The Witness: I have the cash book (producing book).

The Master: Any one of them will do. Mr. Neumann, you may come over here and look at it.

Mr. Neumann: I would rather have Mr. Cohen. He can tell more than I can about them.

The Master: I am showing Mr. Cohen Complainant's Exhibit 1

the first entry being September, 1918, and it runs down into April, May, and the last entry being May, 1920—the end of May, 1920, apparently. I suppose the other books are the same; I do not think we need waste time looking at them. Complainant's Exhibit 52 Mr. Cohen suggests he would like to look at, and it contains entries as late as May 21, 1920.

2237 Mr. Neumann: May I say this right now, that I will ask that our accountant be given those books tomorrow to work

on.

The Master: Yes.

Mr. Neumann: On these exhibits.

The Master: Yes.

Q. Mr. Spear, in January and February of 1918, was the Flushing Bay or Creek frozen over?

A. It was.

Q. So that deliveries of oil could not be made by boat?

A. That is right.

Mr. Neumann: What year was that?

Mr. Ransom: 1918, January and February.

The Master: That is the time the gas candle power went down considerably?

Mr. Ransom: At times.

Q. During that time you could get oil only by train, by rail?

A. By tank cars, yes.

Q. Did you have difficulty in obtaining during those months an adequate supply continuously?

A. We did, because the Standard Oil Company—

Mr. Neumann: One moment. I object to it on the ground it is incompetent, irrelevant and immaterial. The fact that they had a little difficulty in getting oil, so far as transportation is concerned—I do not see how that can affect the candle power.

The Master: The objections stated are overruled.

Mr. Neumann: One moment, I have not finished them yet.

The Master: Oh, have you another one?

Mr. Neumann: Yes, I have another one.

2238 The Master: Let us hear the other one.

Mr. Neumann: In addition to that I want to call the Master's attention to the fact that this is not strictly rebuttal.

The Master: That is overruled. Anything else.

Mr. Neumann: Exception.

Q. Did you finish your answer?

The Master: No, he was interrupted. The question is not whether you got an adequate supply, but tell us what troubles you had getting your oil. If Mr. Neumann objected to the word "adequate" I would have sustained it.

The Witness: We had a great deal of trouble getting oil from the Standard Oil Company, because they did not have tanks enough. At the same time there were a great many other companies that were frozen up the same way—

Mr. Neumann: I move to strike that out about the other companies.

The Master: Yes.

Mr. Neumann: This company was dealing with——

The Master: I sustained your objection. Just tell your troubles, Mr. Spear.

The Witness: We were telephoning frequently, several times a day, to the Standard Oil Company to get cars. Some days we would not get any cars, some days we would get one, some days we would get two, and our stock went down as low as 30,000 gallons on days.

By the Master:

Q. How much did you need a day?

2239 A. About four to five thousand, but you cannot pump it out of the tanks.

Mr. Ransom: That is all.

Mr. Neumann: So far as the exhibits are concerned, I am going to request at this time that the cross examination be suspended until our accountants have time to check them up.

The Master: All right, I will give you until Monday morning.

Cross-examination.

By Mr. Neumann:

Q. Mr. Spear, the winter of 1918 was a severe winter?

A. It was. That was the winter of 1917-1918.

Q. Yes. You recall when I was cross examining you with reference to Flushing Bay being frozen over, you stated that it never froze over?

A. No, I did not.

Q. Well, I will have one of the men look it up and direct you that in a moment.

A. My recollection is that I stated it had been frozen over twice since I have been in Flushing.

Q. Do you recall I was directing your attention to a particular year?

A. Yes, I think that was the year 1919 you spoke of.

Q. Asking you whether it was frozen over.

A. Yes, I think that was the early part of 1919.

Q. And in answer to that question you said you did not know that it ever had been frozen over?

A. Oh, no; I did not make that statement.

Q. Did you not state on your cross examination that you had a difficulty in getting coal during the year 1919?

2240 A. Yes.

Q. And was that not by reason of the bay being frozen over?

A. No.

Q. What was the reason for that?

A. Due to a shortage of coal.

Q. How much oil did you have on hand in November of 1917, do you know?

A. No, I don't remember.

Q. How much oil did you have on hand in December, 1917, do you know?

A. I don't recall now.

Q. Have you any data in court here now that will give you that?

A. No.

Q. You did come prepared to testify to that?

A. No.

Q. Is it not a fact that you had less than your usual supply on hand during that time?

A. No, I would say we had our usual supply in November and December; that is, the early part of December.

Q. When did this shortage begin, then, as you state, of the shortage that you state?

A. The early part of January, 1918. The buy from coast about the 27th or 28th of December, 1917.

Q. What is the usual quantity of oil that your company keeps on hand, on average for a month?

A. Well, our tanks hold about 190,000 gallons of oil, and when we get—

Mr. Newton: One moment, I want to state that never out in the ground it is not responsive.

The Master: Motion denied.

241 Mr. Newton: That question has been gone over time and time again.

The Master: Motion denied.

Mr. Newton: And we have the situation of 190,000 capacity and 190,000 on hand.

The Master: Go on.

A. (continued): And we rarely get below a minimum of 60,000 gallons, when we order another cargo, which fills us up. We get between 120,000 and 130,000 gallons to a cargo.

Q. And you use about 4,000 gallons a day?

A. We did at that time, between four and five thousand.

Q. Now you make it five, do you? At first you said four. How much gas do you manufacture in a month?

A. Do you mean now at the present time?

Q. No, in 1917 how much gas did you manufacture in a month?

A. Well, I do not recall just what the figure was now. We would be between four and five thousand gallons a day of oil.

Q. But your original figure given in direct was 4,000, wasn't it?

A. I may have said about 4,000.

Q. And you don't recall how much gas you manufacture per month?

A. I don't recall how much we manufactured per month at that time, no.

Q. Do you know how much you manufacture now?

A. Yes.

Q. How much?

A. Between 30,000,000 and 35,000,000.

Q. And how much oil would that take?

A. It would depend upon the time of the year.

2242 Q. I am taking an average of four gallons per thousand cubic feet.

Mr. Ransom: I object to the assumption. There isn't any testimony in this case from anybody that four gallons is enough for the company.

The Master: Don't take Mr. Neumann's estimate. How much oil do you use a month?

The Witness: One hundred and thirty to 140,000 gallons a month.

Q. How much has your manufacture increased over 1917?

A. Probably 20%.

Q. Isn't it more than that?

A. Well, I would say 20%.

Q. Isn't it between 25 and 30?

A. No, I would say it was about 20%.

Q. Even taking it at your own figure, 20%, how much do you figure from that taken in 1917, taking 20% off?

Mr. Ransom: I object to that as complicated, indefinite and meaningless, and not cross examination.

The Master: Overruled.

A. Well, it would be somewhere around 110,000 to 115,000 gallons per month, figuring it that way.

Q. 20% of 140,000?

A. 20% of 140,000 would be 28,000. That would be 112,000.

Q. I now show you Complainant's Exhibit 13, and direct your attention to Parcel A down there, the one next to the corner of Farrington Street, being 50 feet west of Farrington Street, on the north-erly side of Myrtle Avenue.

A. Yes.

2243 Q. That is marked Parcel A?

A. Yes.

Q. Isn't that the parcel that was conveyed to the New York & Queens Gas Company by Mary E. Rogers and John F. Rogers on the 20th day of May, 1919?

A. 1909.

Mr. Cummings: 1909 is right.

Mr. Neumann: This exhibit says 1919; it must be an error. Oh, 1909, I beg your pardon.

Mr. Ransom: Then the exhibit is not an error.

A. It is conveyed by Mary E. Rogers, wife of John F. Rogers.

Q. And that is the whole parcel that was conveyed by this deed?

A. Yes.

Q. Look at that deed and tell me what the consideration in that deed is.

Mr. Ransom: I object to that as incompetent, irrelevant and immaterial, and worse. The paper speaks for itself.

The Master: I will allow it.

Mr. Neumann: "Worse" is pretty good. You must have run out of words. Exception.

The witness is now looking at Complainant's Exhibit 38, which the defendants' counsel has directed attention to.

A. The consideration spoken of in the deed is \$300. That is not the amount we paid for it.

Mr. Neumann: I move to strike out the words "that is not the amount we paid for it."

The Master: Motion denied.

Mr. Neumann: Exception.

2244 Mr. Cummings: There is no ambiguity about the amount in the deed.

Q. The amount that you have on Complainant's Exhibit 112 for that same plot is \$1,200, is that correct?

A. That is right.

Q. Now, taking this same plot that we were just discussing, Plot A, was that a vacant piece of land?

A. It was.

Q. No house of any kind on it?

A. No.

Q. Plot B, was that a vacant piece of property?

A. It was.

Q. And Plot C?

A. That was vacant.

Q. And Plot D?

A. That had a house on it.

Q. What kind of a house?

A. Two-story and attic house, frame.

Q. What happened to that house? Did you tear it down?

A. No, it is still there.

Q. Still on the property?

A. It is.

Q. Is it used in your business?

A. Yes, that is the house Mr. Morrison lives in.

Q. And Plot E?

A. That was vacant land.

Q. Plot F?

A. That was vacant land.

Q. Plot G?

A. That had four houses on it.

Q. What kind of houses?

A. Frame.

Q. Where were they? Can you indicate that on the map?

2245 A. There was a house on each of lots 11, 12 and 13 facing Farrington Street, and a house on lot 9, facing this street here (indicating).

Q. Facing the street here, which street do you mean?

A. To the north of lot 9.

Q. There isn't any street there, is there, or is that Centre Street, that one in dispute?

A. Supposed to be Centre Street.

Q. Was there a house on that?

A. There was a house.

Q. Is that house still there?

A. No. All four of them have been torn down.

Q. When?

A. As soon as we got the title to the property.

Q. Do you recall when that was?

A. 1915.

The Master: You could not buy the land without the houses, could you?

A. We could not.

Q. You took them all down, did you?

A. Yes, sir, and built the holder there.

Q. Plot H, was there any house on that?

A. There was.

Q. Where?

A. Well, I would say about the centre of the lot facing Farrington Street.

Q. Is that still there?

A. It is not.

Q. When was that torn down?

A. As soon as we got possession of the property, for the same reason, to build the holder.

Q. Now I notice on your Exhibit 112 here, "Deduct for the Kirby House, \$2,000." What do you mean by that?

2246 A. We paid \$3,000 for the property with the house on it, and I considered the lot was worth \$1,000, so I deducted \$2,000 for the house.

Q. Tell us why you did not deduct the amount of the houses from the other lots?

A. Because the houses did not remain on the property and were of no use to us.

Q. You had to tear them down?

A. Yes.

Q. And you allowed nothing for their value at all on this exhibit?

A. Because they had no value to us.

Q. You tore them right down and allowed nothing?

The Master: So he said.

Q. This Raynor plot, H, is that the Raynor who is with your company?

A. It is.

Q. Do you know whom he bought that from?

A. Yes.

Q. Who?

A. Paulina Curetti.

Q. Do you know how much he paid for it?

A. The same price that we paid for it.

Q. There was no advance in price over what he paid?

A. Oh, no.

The Master: He bought it for you?

The Witness: He did.

The Master: Took it in his name?

The Witness: Yes.

Q. What was the reason for taking the title in his name, rather than in the name of *the com-* of the company?

Mr. Ransom: I object to that.

2247 The Master: I will let Mr. Spear give the reason.

A. I don't know; that was the lawyer's idea.

Mr. Neumann: Have you Exhibit 96 here?

Mr. Ransom: I think so. Here is the original.

Q. I now show you Complainant's Exhibit 112, and direct your attention to the amount, \$29,237.03, with a note ahead of it, "Balance of Area applying average price paid for land acquired since August 1, 1904, total, \$29,237.03." Where did you get that figure from?

A. I took the total area of the property, which is 107,402 square feet, and deducted the number of square feet in the property bought since August 1, 1904, subtracted it, and got the figure 65,598 square feet, which, multiplied by 44.57 cents a square foot, gives \$29,237.03.

Q. I now direct your attention to Exhibit 96, page 2, "Cost of plant and distribution system exclusive of undistributed structural cost, acquired by Complainant on August 1, 1904, estimated as of that date." You see the line there?

A. Yes.

Q. And what is the figure?

A. \$19,423.

Q. So the land there must be the identical land that you figured at \$29,237.03, is that correct?

Mr. Ransom: I object to that.

The Master: Objection overruled.

A. I would say that is the same property.

Q. Now, explain how you got \$10,000 more than Mr. Miller does for the same property?

A. By taking the cost of the land acquired since August 1, 1904, and dividing it by the number of square feet in the property
2248 gives me a figure of 44.57 cents a square foot, after deducting \$2,000 for the Kirby house. The other computation is as I have stated before.

Q. Is it not a fact that if you took out the other houses that that 44.57 would be less?

A. Yes, but you would not have any right to take out those houses. The houses were not of any use to us, and we had to take them with the property, and tear them down to build the holder.

The Master: Let me ask you this, which perhaps is more useful than the stuff Mr. Neumann is wasting his time on.

Mr. Neumann: I take an exception to the Master's comment.

The Master: How did Mr. Miller get that cost of \$19,000, do you know?

The Witness: I don't know how he figured that. It must be from the Halleran testimony.

The Master: How much did the testimony show the property after August 1, 1904?

Mr. Ransom: After August, 1904, \$18,630.90.

Mr. Neumann: That is only deducting the Kirby house, and not taking the other houses.

The Master: The testimony is that \$18,000 was for the land after 1904?

Mr. Neumann: Yes, \$18,630—no, \$20,630.90, includes all land and all houses acquired since 1904. Then he has deducted \$2,000 for the Kirby house, but has not deducted anything for the other houses that he said were there, four of them.

Mr. Ransom: There was \$19,000 aside from the grading and filling. Personally, I think that is low as an index of present value.

2249 The Master: I am trying to figure cost as compared with value. How many square feet in the total area?

The Witness: Yes, sir. You remember the other day looking at the map, and you said we had bought a little less than half.

The Master: My judgment was apparently right.

Q. Don't you know that Mr. Miller used the square foot basis to arrive at the value of \$19,000 of land in 1904?

Mr. Ransom: I object to that.

The Master: Objection overruled.

A. I think he did.

By Mr. Cummings:

Q. In Exhibit 112 it is stated here, "Balance of area applying average price paid for land acquired since August 1, 1904." Where did the company acquire that balance of area spoken of here?

A. It was prior to August 1, 1904.

Q. Why didn't you apply the price then of land at that particular time?

The Master: What do you mean?

Mr. Cummings: I mean, why didn't he apply the price as of the time he acquired it.

The Master: Prior to August 1, 1904?

Mr. Cummings: Yes.

The Master: Because he didn't have it.

Mr. Cummings: The time they acquired it was 1901.

The Master: What?

Mr. Cummings: The time they acquired that balance of area.

Mr. Ransom: Who acquired it, the New York & Queens Gas Company?

Mr. Cummings: Yes.

2250 Mr. Ransom: Why, no; they acquired it in 1904.

Mr. Cummings: Is that right?

The Witness: Yes, the New York & Queens Gas Company acquired it in 1904.

Mr. Cummings: I was mistaken about that. I thought they acquired it in 1901.

(Witness excused.)

JAMES E. ALLISON, called as a witness on behalf of the complainant, in rebuttal, being duly sworn, testifies as follows:

Direct examination.

By Mr. Ransom:

Q. Mr. Allison, where do you live?

A. St. Louis, Missouri.

Q. What is your business or occupation?

A. I am a consulting engineer specializing in valuations of public utilities.

Q. Rate making work?

A. Rate making work, and I am also a lecturer on the economics of public utilities at Washington University.

Q. What is your firm?

A. James E. Allison & Company.

Q. What is your education, and what special course of study have you pursued?

A. I graduated from Harvard a number of years ago, and then became student engineer in cordage and cotton mills, specializing on machine design and prime movers. Then I became student engineer of a gas works, and afterwards manager of gas
2251 works. Then I became manager, designer and manufacturer of street railway equipment; also consulting engineer at times of the mechanical department of a street railway.

Mr. Neumann: May I at this point ask what is the purpose of the introduction of this witness into the record? What is the purpose of his testimony?

Mr. Ransom: Rebuttal.

Mr. Neumann: That does not mean anything. I think before we go any further we ought to have this straightened out, as to the purpose for which this man is now being called. I take an exception.

Q. You were a student engineer with the Hooven & Allison Mills?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial, no necessity shown for calling this witness.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. Yes, sir.

Q. As a mechanical engineer on machine designs?

Mr. Neumann: I make the same objection.

The Master: There is no sense in repeating these objections as to the qualifications of this witness. It may be a very interesting story that will be spread on the record as to the qualifications of Mr. Allison. Counsel are entitled to have that. If when they are through with qualifying Mr. Allison they ask a question in rebuttal which is not proper then your objection will be timely. Don't let us waste time with objections now.

Mr. Neumann: Exception.

2252 A. Yes, sir.

Q. These gas works in which you were first a student engineer, and ultimately a general manager were located where?

A. Xenia, Ohio.

Q. When you became manager and chief engineer in charge of manufacture of street railway equipment, that was for what company?

A. For the Southern Manufacturing Company.

Q. In what city?

A. Nashville, Tennessee.

Q. What happened after that?

A. After that——

Q. That was about 1890 or thereafter?

A. Yes. The next thing that happened was going into the Spanish-American war. When I came out I went to St. Louis and established myself as consulting mechanical engineer. Shortly after that I was appointed Chief of the Bureau of Inspection of Boilers and Elevators, and Chairman of the Board of Examining Engineers.

Q. That was for power plant engineers in the City of St. Louis?

A. Yes. In 1909 I was appointed Commissioner and Chief Engineer of the St. Louis Public Service Commission.

Q. Had you also been selected engineer for the St. Louis World's Fair?

A. Yes, I had been selected as engineer of one of the departments of the World's Fair.

Q. What was the jurisdiction of the St. Louis Public Service Commission of which you were Chief Engineer and member of the Commission, I mean so far as properties of public utilities and valuations are concerned?

2253 A. Our duties were to make valuations for rate making purposes, and establish rates for the public utilities of St. Louis.

Q. There was not a State Commission in Missouri at that time?

A. There was no State Commission then.

Q. How long were you the Chief Engineer and a member of the St. Louis Public Service Commission?

A. Four years.

Q. During your incumbency of that office what was the nature of your particular work?

A. My work was to oversee in detail the inventory and valuation of the different public utilities of St. Louis.

Q. You had charge of the work and laid it out?

A. I had charge of the work.

Q. And selected the staff?

A. Selected the staff and instructed them.

Q. You supervised the work?

A. Supervised the work.

Q. And made the determination according to the results of the work?

A. Yes.

Q. And wrote the reports?

A. Well, yes, I did write the reports.

Q. In 1913, did you resign from the Commission?

A. I resigned from the Commission and went in to practice as a valuation engineer.

Q. In your present firm?

A. In the present firm.

Q. Are your clients both cities and companies, that is, both public officials and public bodies and public utility corporations?

2254 A. Yes, we do work both for cities and for corporations.

Q. And since 1913 you have been engaged in this business of valuing the properties of public utilities?

A. Yes. I think altogether we have made detailed valuations of nearly half a billion dollars, maybe more. I can't always recollect them. I think I testified last time to 350,000,000, but I recollected some cases since then.

Q. That includes gas companies in various cities?

A. Yes. For the last seven years I have been consulting engineer on valuation for the Laclede Gas Company of St. Louis, and during that time have made two complete inventories of their property, one supplemental inventory, and three valuations.

Q. That is, you made a valuation of the United Railway Company, that is the Street Railway Company in St. Louis, for the City?

A. I made three valuations for the city and valuations of different parts of it for bankers and bondholders.

Q. You also made a valuation of the United Railways Company while you were Chief Engineer and a member of the Commission?

A. Yes, sir.

Q. Did you value the New Orleans Street Railway system?

A. I wrote a report on service there. I did not make a valuation of it, but its valuation was included in the problem.

Q. You valued the East St. Louis & Suburban Railways, and the East St. Louis Railways?

A. Yes.

2255 Q. Were you a member of the Board of Arbitration created by an ordinance of the City of Buffalo with respect to

the valuation of the properties of the International Railway Company of Buffalo?

Mr. Neumann: I object to that on the ground that it is immaterial, irrelevant and incompetent. What has that to do with the valuation?

The Master: Objection overruled.

Mr. Neumann: Exception.

A. Yes, I was a member of the Board of Arbitration to place value on the International Railway Company of Buffalo.

Q. For whom did you do the New Orleans work?

A. For the City.

Q. Have you done any work in Kansas City?

A. Yes, I made valuations of the—two valuations of the Kansas City Home Telephone Company, one for the consolidation of the Bell and the Kansas City Home Telephone Company before the Commission of Missouri.

Q. And also a report to the court as an arbitrator in a dispute?

A. Yes, I was made arbitrator on some questions entering in value by the Court in Kansas City.

Q. Did you value the Johnstown, Pennsylvania Gas Company property?

A. Yes.

Q. Did you do any work for the Presidents' Conference Committee of the Railroads of the United States?

A. Yes, I made a report on the principles of valuation to the Presidents' Conference Committee of the Railroads of the United States.

2256 Q. That was a committee convened with respect to the railroads and the valuation work under the Act of Congress?

A. The committee was a committee of the Presidents of all the railroads of the United States.

Q. That is, Class A railroads?

A. Well, I didn't go into the details of its organization. It is a well-known committee.

Q. You are frequently retained by bankers and investors to report on properties and their values?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial, very vague and indefinite, and does not mean anything.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. Well, I am retained by them every once in a while.

Q. And you appear from time to time before Commissions and Courts and public legislative bodies in proceedings involving property values and elements of property of utility companies?

A. Before Commissions and Courts.

Q. Have you written for publication on the subject of valuations?

Mr. Neumann: Objected to upon the ground that it is incompetent, irrelevant and immaterial, and not the proper way of proving it.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. Yes.

Q. Are you a member of any engineering societies?

A. I am a member of the American Society of Civil Engineers, the American Society of Mechanical Engineers; the Harvard Engineering Society; the American Economic Association.

2257 Q. Are you connected with the educational staff of any educational institution?

A. Washington University of St. Louis.

Q. As a lecturer on any particular topic?

A. On the economics of public utilities.

Q. You have read certain portions of the testimony in the present case to which I directed your attention?

A. Yes.

Q. At page 2342 and 2343 of the mimeograph record, Mr. Maltbie, in response to questions, testified as follows:

"Q. Have you considered at all the value of that plant as it stands?

"A. For what purpose?

"Q. For the purpose of making and distributing gas?

"A. That is not the question.

"Q. That is my question.

"A. I cannot give you an opinion on the value of property without knowing the purpose for which the value is to be fixed."

Now, referring to this testimony which I have quoted, to the effect that an opinion cannot be given on the value of the property of a gas system without knowing the purpose for which the value is to be fixed, I ask you whether in your opinion the value of the property can be determined without knowing the purpose for which the value is to be fixed?

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial, not rebuttal, not from a witness properly qualified to speak, and something that was brought out on cross-examination by complainant's own counsel.

2258 The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Cummings: And the question has been thoroughly settled by the court anyway, irrespective of Mr. Allison's opinion.

A. No. The purpose of a valuation has nothing to do with value. Value is a fact. It is the same for whatever purpose it is made. There is a method of calling it value for this purpose or that purpose which merely gives an excuse for fixing arbitrary figures. Valuation is relation in exchange. The value of property or anything else is what it would exchange for in goods, or measured in money, what it will exchange for in money.

Mr. Neumann: I move to strike out the answer upon the ground that it is not responsive.

The Master: Motion denied.

Mr. Neumann: Exception.

Q. Have you finished your answer?

A. Value is a fact. It is difficult to ascertain unless there is actual exchange, but it is there.

Mr. Neumann: I move to strike out the witness' answer upon the further ground, if your Honor please, that the opinion of this Master in the Consolidated case is that there are different kinds of value.

The Master: Motion denied.

Mr. Neumann: Exception.

Q. Referring to the testimony of Mr. Maltbie in this case, particularly at pages 2348 and 2349 of the mimeograph testimony as to how depreciation should be defined, and at page 2352 of the mimeograph record as to what factors should be included in determining an amount of depreciation, how would you define accrued depreciation?

Mr. Neumann: I object to that on the ground it is incompetent, irrelevant and immaterial, fully covered by two witnesses, both the witness Miller for the complainant, and the witnesses for the defendants, and the witness here is only giving cumulative testimony on a subject which has been fully covered heretofore.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. Will you read the question?

The Master: How would you define accrued depreciation?

The Witness: Accrued depreciation is a misnomer. Depreciation is a change in value, a lessening in value, two comparative values, whether it is accrued or not. It is just depreciation. The term "accrued depreciation" is used by a certain school of valuers to define what they arbitrarily take off of a property on account of a lack of newness. That has nothing to do with a property composed of productive capital. The value of a property, of a utility property, the present value is what that property will bring. The present fair value of the property is what it will bring under fair rates. Fair rates are what will induce capital now to come into that business and create properties like it. Otherwise capital in the property is in under duress, and there is no free capital that will come into the business.

Mr. Neumann: I move to strike out the answer on the ground that it is not responsive, and that he has gone far afield, and volunteered a lot of information that the question did not call for.

The Master: I think he has gone afield and made statements not responsive, but I do not think it is of any special importance. I will let it stand.

Mr. Neumann: Exception.

Q. Is there any necessary assumption of loss of value on account of some lack of newness?

Mr. Neumann: I object to that on the ground it is incompetent, irrelevant and immaterial, not rebuttal, and on a subject that has

been fully covered by witnesses for the complainant and the defendants.

The Master: Objection overruled.

Mr. Neumann: Exception.

The Master: Can you answer that yes or not, Mr. Allison?

The Witness: No, I cannot answer it so it could be understood. I can say "no," that in my opinion lack of newness does not affect value, but it makes the answer incomplete, and perhaps unintelligible.

The Master: Then answer it in some other way.

The Witness: I will say this, that in a plant which is well maintained, and replacements have been made, on account of mere lack of newness there is no depreciation in value. Capital goods are valued on account of their capacity for production.

The Master: I cannot quite follow what you mean by depreciation in value. You say that value means what you can exchange it for?

2261 The Witness: Yes.

The Master: What are you depreciating?

The Witness: Depreciation is only a comparative term. I can say that a property has depreciated from the former value, or has appreciated from the former value.

The Master: That is what I am getting at. I haven't heard you start from anything.

Q. What is depreciation?

A. Depreciation is a lessening of value.

Mr. Neumann: I object to that as incompetent, irrelevant and immaterial, not rebuttal, and on a subject fully covered by the complainant and by defendants' witnesses.

The Master: Objection overruled.

Mr. Neumann: Exception.

The Master: Let us get this clear. Mr. Allison is discussing with you depreciation. Depreciation from what? Where do you start from?

The Witness: You have to say the property is depreciated if its value now is less than a former value.

The Master: Its cost?

The Witness: The real cost of the property does not measure value except at the actual time when the cost takes place. It has nothing to do with present value today, any more than the cost of a stock last week or last month has anything to do with the present value or cost of the stock. Now, then, the stock may have depreciated, and be worth less today than it was then, or it may have appreciated.

Q. How is present value generally measured?

2262 Mr. Neumann: That is objected to on the ground it is incompetent, irrelevant, immaterial, vague, meaningless and indefinite.

Mr. Cummings: The Court has to decide the value.

Mr. Neumann: Yes, not this witness to testify to it.

The Master: I think I will sustain that objection. What I imagine Mr. Ransom is getting at is, in arriving at the value of the plant, do you get a correct result, in your opinion, by taking cost and arbitrarily depreciating it based upon the probable life you view it of the property, do you get the value that way?

The Witness: You do not. You will not get a value as of time except at the time of the cost to start with. That is no value today, it is only the value at that time. Depreciation is an attribute of value. You cannot apply depreciation to cost years ago and say that that property has depreciated and is now worth much, any more than you can add apples and potatoes together.

The Master: Isn't that what you are trying to get at, Judge?

Mr. Ransom: Yes.

The Master: As to whether Mr. Maithe and Mr. Hane can go to a value when they take what we will assume is original cost and arbitrarily depreciate it, even assuming that they correctly figure probable life of the property.

Mr. Ransom: What I am trying to get at is that the present value is measured by the present cost of duplicating or reproducing the property. Cost in an earlier year, let us say twenty years ago, would be the measure of the cost of duplicating or reproducing the property then, but does not measure the cost of duplicating the property now, or its value now, and when you try to apply some present theory of accrued depreciation to cost ten or twenty years or fifty years ago, you have got an absolutely incorrect thing.

The Master: Let's see if I cannot get this thing clear.

By the Master:

Q. Assuming a piece of property purchased twenty years ago for \$100,000, it is worth \$100,000 when it is purchased?

A. When it is purchased, when the exchange is made.

Q. In other words I have got cost and value equal?

A. Identical.

Q. Identical?

A. The cost establishes the value.

Q. I am not going to assume that, I am assuming that as a matter of fact it is worth what you pay for it—I have been stuck once before by paying more than a thing is worth, but now I am assuming the thing is worth just what you pay for it, so that we will not have any misunderstanding there. Now, that property is in first-class operating condition, replacements made such as you have suggested, and is well maintained. Now, after the period of twenty years, disregarding new reproduction cost of any kind, would in your opinion determine the value of that property?

2294 A. Cost or was worth \$100,000 twenty years, disregarding reproduction cost and any other element, as being worth simply because it was twenty years old? Has it depreciated in twenty years as a definite certain thing, without regard to any element?

A. The cost twenty years ago would be no factor in estimated value today, so that you could not get a value today by deducting anything from the cost twenty years ago.

Q. Now, Judge Kimball presents another line: The contention is that the only basis of determining value is what it will cost to reproduce.

Mr. Kimball: To duplicate, I said that is a common standard of determining present value. What I say is that the common way of ascertaining or arriving at the present value is present cost of duplicating the thing that is to be sold.

The Master: Well, but what you have got to limit your inquiry to as far as these witnesses is concerned, is what in his opinion is the way to find, as a fact, not the value of law, but I mean as a person expert in the knowledge of values of property, to go in and value a gas property, how you would do it in your opinion?

Mr. Kimball: Well, I will admit that.

The Witness: To find the value of a property today, I would take the case to reproduce the property today. That would represent, if it represents in good condition, if it were not absolute, it would represent as closely as possible what someone who wished to go into that business today would give for it. The purchase of the gas

who wanted to invest, we will say, in the gas business today, would have the opportunity of buying that property or of building its duplicate if he wanted to go into that particular business, or he might build it in another town, or wherever it was for, the first thing in his mind would be, What can I afford to give for this property? I can afford to give for it approximately what it could cost me to duplicate it, if I am determined to go into the gas business. We have instances of that, in fact, where cities wish to lay water works or other things. If they are properly advised by a engineer today, and if they are determined to buy that property, they have the option either of building one themselves, which would cost them as much as the duplication of the property, or of buying that other property, and, as I say, if they are properly advised, the engineer advising them will be very careful about allowing them to go into the risk of building a new property when they can get what will give them exactly the same service by buying the present property.

The Master: When you take a figure of that kind, don't you allow anything for the age of the property?

The Witness: Not for age alone. You see, if the age—the age of a building, for instance, does not detract at all from its capacity to act as a productive piece of capital, as compared with its cost

duplicate today, provided the building is in first-rate condition. If we tore down a building in one of our gas plants and put up another building, assuming the first building to be in its best condition, the new building would cost no longer than the old building, because the building will go out on account of obsolescence or inadequacy, and the new building will go out just as quickly as the old building.

The Master: If it is a duplicate of the old building?

The Witness: If it is a duplicate of the old building.

Q. Mr. Allison, I call your attention to the question addressed to Mr. Maltbie when he was on the stand, as to whether in arriving at a fair value of the property of complainant company at this time, there should be a deduction, in his opinion, for depreciation; and Mr. Maltbie answered that in his opinion there should be. What is your opinion as to whether in arriving at the fact of the fair value of the property of the complainant company at this time, assuming such property to have been properly maintained by repairs, renewals and replacements and to be in good and efficient operating condition there should or should not be a deduction for depreciation?

The Master: A deduction from what, Judge?

Mr. Neumann: That is objected to on the ground—

The Master (interrupting): Wait until I get my question right.

A deduction from what?

2207 Mr. Ransom: A deduction from either original cost or from present cost of duplicating the plant.

Mr. Neumann: One moment; I object to that on the ground it is incompetent, irrelevant and immaterial, the subject fully gone over by the witnesses both of the complainant and the defendant as rebuttal.

The Master: Overruled.

Mr. Neumann: Exception.

A. Under that assumed property there would be no difference in productive capacity between that property and a new property, and the property described is just as valuable as capital good as new.

Mr. Neumann: I move to strike the witness' answer out on the ground it is not responsive to the question.

The Master: I will deny the motion. The question was, should there be deductions for depreciation from either original cost or duplicating cost.

The Witness: My answer is no.

Q. Why, in your opinion, should there not be a deduction for accrued depreciation from the original cost in ascertaining the fact of value?

Mr. Neumann: Objected to on the ground it is immaterial, irrelevant and incompetent, the question is vague, indefinite, incomprehensive. As already stated, the term "value" has a number of meanings, and it should be confined to a particular meaning so that it is clear as to what the witness has testified to. And in addition to that, it is a subject that has already been covered fully on direct.

2208 and in the defendants' case, and it is therefore not rebuttal.

The Master: Overruled.

Mr. Neumann: Exception.

The Witness: I believe I have already answered you.

The Witness: I thought he did.

Mr. Ransom: I think that is so.

Q. Referring to Mr. Maltbie's testimony that the value of a gas plant and property such as that of this complainant had a constantly diminishing service potentiality with a correspondingly diminishing value, what is your judgment as to whether, in a gas system, which is well maintained by repairs, renewals and replacements, and is in good operating condition and is efficient, there is any such decreasing serviceability?

Mr. Neumann: Objected to on the ground it is immaterial, irrelevant and incompetent, fully covered, not rebuttal, and it does not properly state the facts in accordance with the present state of the record.

The Master: Well, what fact is not properly stated?

Mr. Neumann: The witness Morrison in direct answer to a question of the Master stated that, so far as this N. Y. & Queens Property was concerned, that at that time it was not properly maintained because it was dirty, and they did not get the efficiency out of it they should.

The Master: That is not my recollection.

Mr. Neumann: That is my recollection when you were asking him how he could explain why it required 5 to 6 gallons
2269 of oil to enrich the gas.

The Master: Anything else?

Mr. Neumann: That is all.

The Master: Overruled.

Mr. Neumann: Exception.

A. Well, a public utility property, properly maintained and replaced, does not have a decreasing value; it goes on as far as we can see into the future; it has gone on for many years. The property goes on being replaced from time to time as replacements are necessary and it continues to give service, it will in all human probability continue to give service and just as good service as it is giving today for as far as we can see. The fact is, it is exactly as I believe I said before, like a tribe of people, there is so many people in the tribe, people are constantly dying and other people are being created or born and the tribe goes on. That is the way a public utility property goes on. We do not see any public utility properties coming to an end. No public utility property that any of us know about has ever come to an end, and they do not go out of existence like some little mining town out West except where the whole town gives out.

Q. Then you say there is no such thing as decreasing serviceability?

A. There is not, it is constantly kept up. That is what the depreciation charge is for, it is to prevent depreciation.

Q. That is, in a large and well managed gas plant, all of the portions of the plant do not go out of service at one time?

A. They do not, and by management they can be spread considerably and the management can put off the replacement
2270 of one thing that comes in a year with others, and in that way make a comparative level of replacement costs.

Q. Assuming that wear and tear are counteracted by renewal, re-

placement and repair, does the fact that certain periods of time have elapsed since the installation of the different items of physical property going to form the gas plant, limit, diminish or depreciate the length of life of the plant as a whole?

Mr. Neumann: Objected to on the ground it is immaterial, irrelevant and incompetent, fully covered and not rebuttal.

The Master: Overruled.

Mr. Neumann: Exception.

A. It does not. The items, if maintained, are always of the same productive capacity as replacement items or new items.

Q. Does such lapse of time decrease, diminish or limit the usefulness of the plant?

A. It does not.

Q. Does a gas plant property maintained properly in your opinion and experience have any definite end to its life?

A. It does not, and therefore it can have no fraction of its life gone.

Q. It continuously renews itself?

A. It continuously renews itself.

Q. Can it be said that the different items in the equipment of a gas system have a definite life which may be assigned to them for the purpose of calculating the value of the plant as a whole?

Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial and fully covered.

2271 The Master: Overruled.

Mr. Neumann: Exception.

A. There can be no ascertained, no definite life to equipment of gas plants. Nearly everything in it, except maybe checker brick which may be consumed, goes out on account of inadequacy or obsolescence, and inadequacy and obsolescence cannot be prophesied. Obsolescence comes up perhaps suddenly by the invention of something else. It cannot be foreseen and the different circumstances of different plants will make different lives for the same kind of equipment. If we take engines, for instance, there may be an average life of engines, although nobody has ever figured it out, all over the United States, but the engine lives would run, we will say, from one year to fifty years. Now, in this particular plant can we say it is going to last twenty-five years? It may last three years, or it may last forty-nine years, and no one can tell. The only thing that can be told is by the experience of the managers that it takes about so much a year to keep their replacements up.

Q. Assuming that the gas plant of the New York & Queens Gas Company, comprising the buildings, structures, apparatus and facilities used in or in connection with the manufacture, distribution, sale and delivery of gas, has been properly and adequately maintained through repairs, renewals and replacements made from time to time as and when required, and assuming that such parts as have actually worn out have been made good, and that the plant is in a good and efficient operating condition, and that the plant is operated as an

2272 established and going concern, and that it has been and is rendering continuous and efficient service, what is your opinion as to whether or not the value of the gas plant is depreciated below its present reproduction cost?

Mr. Neumann: Objected to on the ground it is immaterial, irrelevant and incompetent and does not take in all of the facts that such a question should.

The Master: Overruled.

Mr. Neumann: Does the Master want me to point out the fact that he has not?

The Master: No.

Mr. Neumann: Exception. And not rebuttal testimony?

The Master: Overruled.

Mr. Neumann: Exception.

A. It is not depreciated and investors wishing to go into the gas business——

The Master: I do not care about that.

The Witness (continuing): — would give that much for it.

The Master: Is it worth its reproduction cost without depreciation?

The Witness: It is worth its reproduction cost without depreciation.

Mr. Neumann: I move to strike out the witness' answer.

The Master: Motion denied.

Mr. Neumann: Exception.

Q. Does the amount of capital investment represented by the property as a whole diminish with the lapse of time since the installation of individual items of the plant?

Mr. Neumann: Objected to on the ground it is immaterial, irrelevant and incompetent, already fully covered by the direct case and the defendants' case, therefore not rebuttal.

2273 The Master: Objection is overruled.

Mr. Neumann: Exception.

A. Not of the property described.

Q. Mr. Allison, it has been stated by one of the witnesses in this case that in his opinion a depreciation reserve should be created, "so that when property is retired for any cause whatsoever that fund can be charged with the cost of the property," and also that the amount reserved should be deducted from the value of the property in order to determine the amount on which the company should be allowed to earn a return, and that when the reserve is needed for the purpose of renewals and replacements this should be provided by issuing securities against construction work which had been done originally out of this fund of money laid aside for this fund, just reimbursing the treasury on account of those expenditures. I wish to ask you whether as a matter of practical utility finance, it would be possible to do any such thing?

Mr. Neumann: Objected to on the ground it is immaterial, irrelevant and incompetent, to a very large extent this question impeaches the testimony of their own witness Miller.

Mr. Ransom: Not in the slightest.

Mr. Neumann: A great deal of this question is part of Miller's testimony; and upon the additional ground it is not rebuttal and the further additional ground from a witness not properly qualified to answer.

The Master: Overruled.

Mr. Neumann: Exception.

A. As I understand the proposition, it would be to capitalize the property invested in a fund which was deprived of earnings, 2274 or a portion of the property which was deprived of earnings. You could not capitalize property that could have no earnings.

Mr. Neumann: I move to strike the witness' answer out upon the ground that it is not responsive to the question.

The Master: Motion denied.

Mr. Neumann: Exception. There was no mention of earnings, nothing at all in the question.

The Witness: It is deducted from the property.

The Master: Motion denied.

Mr. Neumann: Exception.

Q. The effect of the deduction of the reserve would withhold the earnings?

A. It would withhold earnings.

Mr. Neumann: Same objection as last urged, and in addition to that, it has no relation to the question that was asked at all, the answer.

The Master: Overruled.

Mr. Neumann: Exception.

Q. And would there in fact be any earnings out of which to pay the interest upon the securities issued for the purpose of reimbursing the fund?

Mr. Neumann: Objected to on the ground it is immaterial, irrelevant, incompetent, not rebuttal for the reason that the question that the counsel is endeavoring to call the witness' attention to, as I now recall it, did not in any way take into consideration the question of earnings.

The Master: I understand the question is withdrawn.

2275 Q. In your opinion is any reserve for accrued depreciation necessary, and should any be included in the rate and thus exacted from the consumer?

Mr. Neumann: Objected to on the same grounds that it is incompetent, irrelevant and immaterial and in direct conflict to what Colonel Miller testified to when confronted with his testimony in the Kings County case, and not rebuttal, it is cumulative, already been testified to by complainant's witnesses and defendants' witnesses.

The Master: Overruled.

Mr. Neumann: Exception.

A. A reserve for accrued depreciation is in the first place a reserve for what I consider a false calculation of depreciation, and in so far as any fund is permanent and cannot be used for replacement, it is absolutely useless to the company and to the consumer, and simply places some extra burden on the consumer in his rate to accumulate that fund. The only real effect of it is in depriving the company of the earnings from the property accumulated in it. The public, the consumer, becomes a part owner of the plant without his own consent and without the consent of the company. The whole effect of it is to put into operation a socialistic scheme under cover of a depreciation charge.

Mr. Neumann: I move to strike from the record the witness' answer as not responsive, he has gone very far afield to endeavor to inject political questions into this case.

The Master: Objection overruled.

Mr. Neumann: Exception.

2276 Mr. Neumann: So far as I am concerned, I will say to the Master that I am unprepared to go on with this witness and cross examine him now.

The Master: Why?

Mr. Neumann: I had no reason or right to expect that on rebuttal any such witness would be produced.

The Master: Why? You have introduced evidence as part of your case as to the depreciation to be taken from the cost of this property, so why are you not prepared to cross examine Mr. Allison? I would if I were counsel for the defendants.

Mr. Ransom: The complainant offered no evidence on the subject of depreciation on its case.

Mr. Neumann: Did not Mr. Miller go into it?

Mr. Ransom: There were a few questions asked of Mr. Miller on cross examination, but I carefully refrained——

The Master: I see no reason for postponing this cross examination. If I were counsel for the defendants I could proceed with it very easily.

Mr. Neumann: I will tell the Master that I am not prepared to go on, and if I am forced to go on I will have to put myself in the hands of the Master and bow to his wishes, and respectfully except to his forcing me to go on at this time with the cross examination.

The Master: Well, I direct you to.

Mr. Neumann: I take an exception.

2277 Cross-examination.

By Mr. Neumann:

Q. What courts did you testify before, Mr. Allison?

A. I have testified before the United States Courts.

Q. Which ones?

A. Well, I can recollect a few of them. I just finished testifying

in Houston, Texas, before the United States Court, and in Springfield—

Q. What was the name of that case?

A. That was the Houston Telephone Company, the Bell Telephone Company of Houston.

Q. Whom did you testify for in that case?

A. I testified for the company.

Q. The Utilities Company?

A. Yes, sir.

Q. What other case did you testify in in court?

A. I testified before the United States Court in Illinois.

Q. What was the name of that case?

A. That case was the East St. Louis & Suburban Railways.

Q. Whom did you testify for in that case?

A. For the company.

Q. What other case did you testify in in court?

A. Of course I do not recollect them all. I can recall another case or two, maybe. I testified before the court in St. Louis on the value of the Las Vegas, New Mexico property.

Q. The value of what?

A. The Las Vegas, New Mexico, electric property. I was testifying there for a bank.

Q. For what purpose were you testifying.

A. Well, I was testifying to establish the value of the bonds.

2278 Q. Are those the only cases that you have testified in, that you can recall?

A. Before courts, that is all I recall now. I probably could recall more if I had time.

Q. Were you offered as a witness in the case of the Kings County Lighting Company?

A. Oh, yes, I had forgotten that.

Q. Before Mr. Justice Greenbaum?

A. Yes, and I was also in the case before this witness—or this Master, recently.

Q. In the case before Judge Greenbaum they did not accept your testimony and they did not permit you to testify, did they?

Mr. Ransom: That is objected to.

A. That is true.

Q. And do you recall what the court there said?

A. The court told me to put it in the argument and allowed them to submit in the argument what I had to say.

Q. And you were not permitted to put it into the record?

Mr. Ransom: I object to it; it has nothing to do with this case.

A. The lawyers had to do with that; I do not know whether it went in or not.

Mr. Ransom: They put in some testimony on the direct case and they tried to recall him in rebuttal and they would not allow it.

Mr. Neumann: Just what you are doing here.

Mr. Ransom: They asked Colonel Miller some questions on cross examination, and I carefully refrained from taking up the matter on re-direct. I kept entirely away from it.

The Master: Do not let us get into that case. Judge Greenbaum tried one case and I am trying another.

2279 Q. Did you testify in any other cases that you can recall?

A. I do not recall any more. You may remind me of them, but I do not recall.

Q. No, I have not any others in mind. I would like to find out?

A. I would like to recall a good many more, but I do not.

Q. You say you testified before commissions?

A. Yes.

Q. What commissions did you testify before?

A. The New York Commission for the First District.

Q. In what case?

A. I wrote a report that went into that—that went to that Commission and was called to a hearing. It was several years ago, and whether I testified there or not I cannot recollect; but it is a matter of record. But I wrote the report.

Q. You do not recall what the name of the case was?

A. It was an accounting case of the Consolidated Gas Company, an order, I think, as I recollect it, of the Commission, to which they objected.

Q. Whom did you testify for in that case?

A. For the Consolidated Gas Company—if I testified. I made the report and I was there at the hearing, but I have forgotten whether I went on the stand or not.

Q. Whether you testified or reported, for whom did you——

A. I worked for the Consolidated Gas Company.

Q. That is what I mean, yes. What other Commission did you appear before?

A. I appeared before the Missouri Commission a number of times.

2280 Q. How many times?

A. Oh, three or four cases. Maybe more than that.

Q. Do you recall what the names of the cases were?

A. Well, once for the City of St. Louis in the case of the United Railways Company. I have been before the Commission for the Bell Telephone Company—or rather for the Home Telephone Company.

Q. You appeared and gave testimony on behalf of the Home Telephone Company?

A. On behalf of the City of St. Louis also. They were different cases.

Q. Oh, different cases?

A. Yes.

Q. And the other case?

A. The Home Telephone Company of Kansas City.

Q. On whose behalf did you give testimony in that case?

A. For the Home Telephone Company.

Q. And the other case, the fourth one?

A. I did not say any fourth one. I have been before the Commission, I think, for the Laclede Gas Company.

Q. You gave testimony on behalf of the Laclede Gas Co.?

A. Yes, on behalf of the Laclede Gas Company.

Q. Do you recall any other commissions or courts that you appeared before and gave any testimony?

A. Yes, the Illinois Commission.

Q. How many times did you appear before that commission?

A. I think twice.

2281 Q. Do you recall what the cases were?

A. They were both street railway cases.

Q. And in whose behalf did you appear and testify?

A. In behalf of the company.

Q. In behalf of the company?

A. Yes.

Q. In what court and before what commission did you appear and testify in a rate case?

A. Well, I think nearly all of these were rate cases, except the Kansas City case, which was a consolidation case.

Q. Did you appear for the Brooklyn Edison Company?

A. I did.

Q. That was before the Public Service Commission for the First District?

A. That was. I had forgotten it. I expect I have forgotten a good many cases. I know I have. I do not keep posted on them.

Q. And you appeared on behalf of the utilities company in that Brooklyn Edison Company case?

A. Yes, in that case.

Q. You understand, of course, what a rate case is, do you; you understand what is meant by a rate case?

A. I have made it my business for eleven years, the studying of rate cases.

Q. For industrial properties, or for utility properties, or for both?

A. Well, for utilities, that is my business. I have during the war made a valuation and appeared in a rate case on an industrial property where the Government was regulating it.

By the Master:

Q. I suppose, Mr. Allison, that it is fair to say that there are two well-defined schools on this question of the valuation of
2282 property, are there not—one following the idea that there ought to be a straight line of depreciation, an accrued depreciation, and the other one taking the position that there ought to be no depreciation?

A. You mean there are two well-defined schools, Mr. Gilbert? Most violators do not use the straight-line method of depreciation. Where they deduct depreciation they now do it—and there is somewhat of a fashion in it—by what they call depreciation by observation.

Q. Observed depreciation?

A. Yes, observed depreciation.

Q. In other words, they take a new building and say, Well, the old one is worn in spots and it is worth a little less than the new building, and they depreciate the old building to the extent that they think it ought to be depreciated to meet the conditions?

A. Yes. I think all valuator's will say that the condition of a property has something to do with the value, and this is depreciation by observation. If they want to get a real measure of the depreciation in dollars they will ascertain how much money it will cost to put that thing in first-rate condition; then they have a measure of it, otherwise they have no measure at all, and a man whether or not his breakfast disagrees with him or something like that may come to a different result.

Q. After all, the question is, What is the property worth to the person who wants it?

A. Yes.

Q. Is that so?

A. That is it.

2283 Q. If there is no demand for the property at all it practically has a junk value?

A. Yes, and there you get into the question under regulated properties of what is a fair value and a fair value assuming a fair earning.

Q. No, I am talking about this company; if nobody wants to buy it for any reason, it cannot have anything but a junk value?

A. It is the only thing they can sell it for.

Q. That is what I wanted to get at.

A. But that is not a fair value.

Q. It is a fair value for junk, is it not?

A. Yes, for junk, but not for a utility.

Q. But that is so, is it not?

A. Yes.

Mr. Neumann: You draw the distinction between junk and a utility.

The Master: Wait a minute until I finish.

Q. You said there was no difference between the values. There is one kind of value, assuming the extreme case I have assumed, that nobody wants it, under any circumstances, that either because of the public attitude to the utility or court decisions or financial conditions or change in the art or for some other reason they do not want a gas works at all—it will only have a junk value then, will it not?

A. Yes.

Q. Now take another situation where the State or the City suddenly determines to operate its own gas and City water works; the investor and the company are entitled to have all that property is worth, are they not?

A. Yes, sir.

Q. And it is worth at least as much as it would cost the City to replace that plant?

2284 A. Yes.

Q. That is so, isn't it?

A. Yes. You have a demand for it then.

Q. Well, that is a different kind of value, though, is it not?

A. Yes, one is a fair value and the other is the actual value.

Q. Then suppose I present another situation where half a dozen men in this room have gotten suddenly crazy and want to own the gas business, and they want this particular plant like Flushing; for some reason or other they think there is a great future to it—and the New York & Queens Gas Company and its trustees know the situation. Now, they are not going to sell it for what it is going to be replaced for, ordinarily, are they, to these crazy people that are going into this business?

A. Now when you say these people are crazy it puts a little different aspect on it.

Q. Well, they are anxious to get it; it is worth more to them than to anyone else.

A. If they are going into the gas business it is worth just as much as it would cost to build a new one.

Q. But they do not want to build a new one; it is worth more to them than a new one, is it not?

A. If it is in good shape, yes.

Q. That is a different kind of value, is it not?

A. No, that is the same—I have no different kinds of value. I say the value is the relation in exchange of this property; it is what it would bring. If you put up a hypothetical case, of course, by the change in conditions, you can change the value, but they are hypothetical values.

2285 Q. What I am getting at is this. When I have assumed a case where there is no demand for it at all, it has a lesser value than where I assume there is a peculiar demand for it?

A. Yes.

Q. You have two different values for the same article, haven't you?

A. Yes, under two different assumptions.

Q. We have still another situation here. This company has built this plant from day to day and from year to year, and has put its money in it, and it has invested money in it from time to time; it has had the opportunity of serving the people exclusively in that section, in the nature of a monopoly. The cost to reproduce that property varies with the times, does it not?

A. At different times it would cost different amounts for reproduction.

Q. At times of very low value it would cost less to reproduce than in times of very high value?

A. Certainly.

Q. And either one of those values or figures may be more or less than what it cost?

A. Yes.

Q. What is the value to be arrived at having in mind the consumer? In other words, you cannot revalue it today, and then if prices drop next year revalue it again, and then if prices go up next year revalue it again; can you?

A. No.

Q. What value is there?

A. At any one time, your Honor, the value at that time is what it would cost to reproduce.

Q. I know that.

A. Then if you take the phrase "the value" as at the time of use, you would probably take the cost to reproduce as extended
2286 over the period of the rate set.

Q. That is just what I am trying to get clear on this record, as to whether that is altogether so. I ask you to go over there and look at that plant, the first thing you have got to know is what purpose you are looking at it for, isn't that so?

A. No.

Q. Well, supposing I was to tell you that I want to buy the holders for junk, will you not give me a value entirely different from the value that you will—

A. Yes, but that is not a plant, that is not a utility plant, that is a piece of junk.

Q. But I want to buy all of that property.

A. But you have not bought a utility.

Q. Just for junk.

A. You have bought a lot of junk. I am talking about a utility.

Q. Is it quite clear taking the same property precisely it has an entirely different value whether it is operated or is not; isn't that so?

A. Of course, it becomes an operating utility. All these questions are put to me as an operating utility.

Q. I understand that, but what I want to get clear on this record is the question of determining the precise value for this precise purpose. I understand, for instance, that in 1919 some property is installed. I take it that the year 1919 is conceded to be a period of very high prices?

A. High compared to several years ago, but possibly not high as compared to several years in the future.

Q. No, but let us assume now that the company having spent \$150,000 for a piece of property in 1919, actually put in and
2287 necessarily expended—it is worth that to the consumer, is it not?

A. Yes.

Q. What?

A. It is worth what is established by the the exchange of property.

Q. That \$150,000 worth of property put in in 1919 is worth \$150,000 to the consumer, is it not?

A. Yes, and to the investor, too.

Q. And to the investor?

A. Yes.

Q. The investor had to put it in. Now, is the investor to be penalized because, perchance, it had cost him less to put it in five years ago?

A. Because it had cost him less? He certainly should not be penalized.

Q. Now, if you value that \$150,000 worth of property that went in

with a \$1,500,000 value and five years from now you can put it back for \$750,000, is not the investor penalized?"

A. Yes, the investor is penalized, but property values change, and they must take the changes in value, if you are going to find the value. If a man built a property today, was induced to do it by a fair rate—and we are talking about value in five years—what the property is worth. He would have to take the consequences, and it would be worth less if the construction costs are less, because people would give him less for it.

Q. Worth less to him?

A. To any prospective purchaser.

Q. For what purpose?

A. For whatever is there. The value of the property is what it can be exchanged for. The value of a property built under competitive prices today, if prices go down the value surely is going to go down, because purchasers of property use the cost to duplicate as their standard. So today if I was going to value my watch, I would not find out what it cost me 100 or 20 years ago, I would say, what is a watch like that worth today? Then I would say, this is worth so much, and that is worth so much, and then I would gauge the value of my watch by what it would cost to duplicate that watch. And so would a purchaser or anybody else I took it to or sell.

By Mr. Newman:

Q. But you would take off something from the price of the watch?

A. If it was not a new watch, not as good as a new watch, I would certainly take off something.

Q. If you had your watch for 20 years, would you say it was as good as a new watch?

A. Yes, and there is the difference, that these personal goods deteriorate in value on account of their being worn—this is a second. But there is no sentiment in productive capital, if you see there are a building already built that will cost me as much money as a new one I would put in place of it, I will give you as much for the old one as I will for the new one.

By the Master:

Q. That is what I am trying to bring out, Mr. Nelson. We want this plant, producing the quantity of gas required, worth just as much to the consumer at any time as it cost to put it up?

A. Because it is what it would cost at that time to put it up.

Q. But you have just used an illustration taking a building and producing the same thing; it is always worth as much as it cost to put it up?

A. If it produces the same thing.

Q. Yes.

A. The actual value of a utility is based—that is, what it will sell for is based on its earnings capacity, the prospective earnings. But when you say, though, the fair value under the regulation of a rate

or rebound, the fair value must be, for that capital in there, what will induce other capital to take its place.

Q I think that is the trouble with this expert testimony, you seem to think the judges and the courts are all solid to me.

A We have to come to some conclusion.

Q No, I want to have the layman's judgment. I am supposed to have it. I got the impression that all your experts seem to think you have got to settle the law first, and what I am trying to get at is what is the value of a piece of property. Now am I as a judge sitting in a judicial capacity to determine what is the value of the property upon which the complainant company is entitled to a return? Now, what I have been trying to get clear in my mind all through the Consolidated case and here again is this: In the year 1904, we will say, this company necessarily paid \$100,000 for the property, in times of high prices—I do not remember whether they were high or low then; in 1910 or 1911 or 1912 they got another \$100,000 into it at very low prices, and in 1913 or 1914 they got another \$100,000 into it at very low prices; in 1915 they got another \$100,000 into it at very high prices. So that this company has put into that property \$400,000, some at high prices, some at low prices, some at very low prices and some at very high prices. The fact is that

that property today stands the company \$400,000. Is it worth \$400,000 to them, no matter how you figure it, whether the prices today are high or low, or depreciation? Is it worth it to the company?

A Not when you are dealing with value. What is what it cost them.

Q I do not care how we figure it. Value is worth, is it not?

A Exactly.

Q I am going to use the word "worth." If I put \$400,000 into a plant that will produce a million cubic feet of gas a day, is it not worth that to me?

A It must not be, it may be worth more or less. If you bought a piece of real estate, bought it five years ago, it may be worth more or less today.

Q I am talking about a manufacturing plant.

A Not a manufacturing plant. Things change in value every night.

By Mr. Newman:

Q Mr. Wilson, the Master having gotten through with you, I will take you back again. So I understand your testimony, you believe that the life of a gas utility plant is immaterial?

A As long as the replacements are made.

Q By that you mean from time to time they have to replace parts?

A They must replace parts. The life of the property would not be until one vital part wore out unless you take that into consideration.

Q I mean they replace them?

A Yes.

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Q. That is what I mean, that that is a very frequent occurrence.

2291 So that as a matter of fact there must come a time when practically the entire plant must be replaced; that is, replacing it step by step and time by time?

A. There will come a time when the property has changed. The physical property is not the same as it was; but there is never any one time from year to year, because they keep replacing parts, and they always keep so much property there.

Q. Exactly, but there comes a time when the original entire parts of the whole plant have got to be replaced, whether it is one year or ten years or a hundred or a thousand or a million years?

A. Well, of course, that is a problem, with cast-iron mains. They have found no exact life to them. I think that the cast-iron mains are still as good as new that were put in 26 years ago.

Q. Would you buy a piece of cast-iron pipe that was in the ground, say for fifty years, and pay the price that you would for new pipe?

A. If I knew it was just as good as new pipe.

Q. If you knew of it?

A. Yes.

Q. Why do you buy new pipe instead of old pipe in the ground, then?

A. Because we can get the new pipe as we want it. Pipes are taken out of the ground and transferred all the time.

Q. Do you know any pipes, even in your own company, that have been taken up and scrapped?

A. When electrolysis or something like that gets at them, yes. They never scrap them otherwise.

Q. Did you ever hear of a pipe becoming too small for requirements?

A. Yes, but that is an inadequacy.

2292 Q. It is another form of inadequacy?

A. It is the only form of inadequacy of a pipe that I know of, because it becomes too small. Unless it becomes too large—that might be a reversal of inadequacy, I do not know.

Q. How about obsolescence, do you recognize that term?

A. Yes.

Q. What does that in your judgment mean, or in your opinion?

A. Well, a thing becomes obsolete when it is no longer economical to use it, or when the public refuses on account of new and better things to put up with it any longer. Just like the high-step cars here, they were very good cars.

Q. Substantially, that is an improvement in the arts?

A. Yes, an improvement in the art.

Q. Did you give as the definition of depreciation obsolescence and inadequacy?

A. Do you mean that that is the definition of depreciation?

Q. Did you give that?

A. No, that is not a definition of depreciation.

Q. Well, what is depreciation?

A. Depreciation is a lessening in value.

Q. Due to what?

A. Due to any cause.

Q. Name some of the causes.

A. Well, as I just said to you, a plant built at very high cost will depreciate in value if all construction costs go down. A plant will depreciate if its rates are lowered; it will appreciate if its rates are increased. It will depreciate if it is neglected.

2293 Q. Wear and tear?

A. If not attended to.

Q. Is it not a fact that depreciation is really wear and tear, inadequacy and obsolescence; isn't that a fair definition?

A. Oh, no; any change in value will make depreciation. In value—that is, a change in value, lessening in value.

Q. Are not those some of the elements that *no* change and lessen the value?

A. If they are present they are a cause of depreciation, but they are not a measure of depreciation.

Q. No, I understand that, but they are the cause of depreciation?

A. They are a cause of depreciation if allowed in the plant. Now, that is, provided that there is no counteracting appreciation.

Q. When you were discussing values with the Master you discussed the question of value from three angles, the scrap, the purchase and the investment angle. Do you recall that?

A. No. No, if you give certain conditions in your premises you have got but one value. Now, if you give different conditions in your premises you have got different values. You have described different conditions of the property; you have described different things that make for value, but there is only one value, that is what the thing will bring.

Q. And that will depend on the conditions under which it is sold?

A. On the conditions under which it is sold.

Q. And purchased?

A. And purchased.

2294 Q. If there were a number of people clamoring for it the seller could get a higher price than if there was nobody wanting it?

A. He could.

Mr. Cummings: That would be a purchase value, would it not?

The Witness: There is no other value in exchange. You say what it is worth. That is what somebody will give for it. When you come to say what it ought to be worth, that is another proposition, when you have to get fair value.

Q. Suppose a number of persons were after the same piece of property, it would appreciate its value, would it not?

A. If they would bid up each other, yes.

By the Master:

Q. Suppose, Mr. Allison, by reason of rate regulation nobody wanted to have anything to do with the gas plant, would it be necessary for me to find this plant had no value?

A. If you were going to find its actual value, yes, Mr. Gill but I am speaking only as a layman now, and that is a layman's opinion of fairness. There is a fair value of a public utility; fair value of a public utility contemplates fair rates, because rates and earning power are the main factors that give value to it.

Q. But a minute ago you said value is what you can sell it for.

A. Yes, and if you have a fair rate, you can sell it for a fair price.

Q. Don't you have to assume the rate that exists at the time? The complainant in this case asserts that the rates are confiscatory of its property; it gets no return on its property; that a body that bought this plant, if the rates were not changed in the period of time necessary to eat it up, would lose property altogether. Must I then say this property has no value?

A. No.

Q. Why not?

A. The very fact that they say it is confiscatory, that their present rates are confiscatory, shows that the value has been taken away from it. That is what is meant by that.

Q. You are placing value upon rates and I have got to base rates on value.

A. We base rates on this: that it must attract capital to the business, otherwise the capital is——

The Master: Well, we are getting into a legal discussion now.

Mr. Neumann: I move to strike that last answer out.

The Master: No; I am going to take everything that Mr. Allison says.

Mr. Neumann: I except to your Honor's refusal to strike it out.

By Mr. Neumann:

Q. Mr. Allison, do you recognize a distinction between open competition and a monopoly?

A. Yes, sir.

Q. A gas utility is a monopoly, is it not?

A. Yes.

Q. Don't you know as a matter of fact that in any open competitive business they all make allowances for depreciation?

A. Well, so does the gas company, and uses those allowances in preventing depreciation.

Q. Is it your theory that a plant should be carried at its full complete value up until the very moment that it goes out of existence, and that there should be no funds set aside to take care of the time when, for any reason that you might assign, that plant would go out of existence?

A. I cannot conceive of a plant going out of existence, and it would be in my mind an absurdity to set up such a fund. The way to keep it in existence is to spend the money that you get for depreciation, and you spend it in replacements.

Q. How about a change in the art such as came about when the coal-gas plants were replaced by water-gas plants?

A. Well, coal-gas plants are now in very successful operation as compared with the water-gas plants in some places.

Q. That is not so generally, is it?

A. It is so in St. Louis. Water gas costs us more there than coal gas. I do not know what it does here.

Q. Water gas is more there than coal gas?

A. Yes, sir.

Q. And that is true in St. Louis?

A. That is true in St. Louis.

Q. Have you ever in your experience heard of the officers of a gas company in their judgment scrapping a coal-gas plant and putting in its place a water-gas plant?

A. I do not know—I do not recall any instance, but I know that at a certain period perhaps that was done, and proved in some places that it would have been an unwise thing to do.

Q. Based on your own experience with gas plants, Mr. Allison, have you found that the repairs run uniform year after year in a gas plant?

A. Yes, very closely. I was examining the maintenance 2297 and replacement account of the Laclede Gas Company within a week. It is a very large plant and they (the accounts) run by the year, but if you take a cycle of three or four years and keep in your mind also the increase in size of plant, you will find it runs pretty regular.

Q. And that has been your experience throughout the eleven years you have been in the gas-making business?

A. That is my experience on examining these accounts within the last two weeks. You have to take into account the increase in size of the plant, you know.

Q. Take this New York & Queens Gas Company as an illustration—and this is one of the exhibits in the case, and the testimony: In the year 1909 the cost of repairs was \$5,072.13, based on the per-thousand cubic-foot basis, the cost of the repairs was 3.46; in 1910, 3.99; in 1911, 4.51; in 1912, 7.51; in 1913, 8.49; in 1914, 7.14; in 1915, 6.55; 1916, 6.669; 1917, 6.61; 1918, 7.33, and 1919, 13.51. Mr. Allison, based on those figures would you say that that conforms to your judgment or refutes your judgment?

A. I will say that does not conform to my study of the—

Mr. Goetz: We object to that on the ground that the question is misleading and the premises false. In the first place it refers simply to repairs and in the next place it takes no account of the element of increase in the size of the plant and the output of the plant. In the third place it takes no account of the element of increased costs. It is altogether misleading and without any foundation for the expression of the judgment of the witness.

2298 The Master: I will overrule the objection.

Mr. Goetz: Exception. Does that apply to the plant alone or to the distribution system? The witness has not been told to what it applies.

The Master: What is the question?

(The question was read by the stenographer.)

Mr. Goetz: There is no indication of the prices paid for the materials or the prices paid for labor.

The Witness: Shall I continue my answer, Mr. Gilbert?

The Master: Yes, finish your answer.

The Witness: I will say that the table as it stands there would not conform to my experience with the LaCleda, but the table made up that way may have many factors in it that do not appear. For instance, a company may be putting out a great deal less gas in proportion to its property than it had before, in which case the price per thousand feet or the repairs per thousand feet would go up. There are many factors that would have to be looked into in a table of that kind, to see whether it would refute my idea.

Q You took into consideration when you answered my questions prior to that time, did you not, that prices fluctuate from year to year?

A Yes, they do.

Q And every element that you have now stated you took into consideration in answer to all prior questions that I asked you before you answered?

A I do not get your question.

2299 Q Just enumerate what are the factors that you *now* think you ought to take into consideration?

A Well, you ought to know, for instance, whether the physical property has increased in proportion to the output.

Q Did you take that into consideration when I was asking you the price questions leading up to this one?

A It should be. I should have taken it into consideration.

Q Did you take that into consideration when you were answering my prior questions leading up to this one, based on the table, yes or no?

A In giving my experience I had taken those into account in reviewing the LaCleda property and their expenses, and taking all those things into consideration, therefore my answer would include those considerations.

Q So that you did take those into consideration in all of the questions that I asked you prior to this one, leading up to this table?

A I do not know what you mean by all of those questions. The question as to the comparative evenness of maintenance and so on would be taken into account.

The Master: I have just been analyzing Schedule 6B. I take it that Schedule 7 is based on Schedule 6B, is it not?

Mr. Goetz: That is a thing to look at.

The Master: When I analyze this expense Repairs, I find repairs of works and station structures, labor, 1914 \$1,120, 1915 \$1,359, and 1916 it dropped to \$574, in 1917 to \$499, in 1918 to 2300 \$200, then in 1919 it went up to \$636, which was half of what it was in 1915 or less than half. As to other items I find, for instance, that material in 1914 was a little over \$1,000, in 1915 it went up to nearly \$1,400, in 1916 it went up to nearly

\$3,000, in 1917 it shaded off a little bit, in 1918 it went to \$4,000, and those same materials in 1919 went up to \$12,000.

Mr. Neumann: Yes, that is what we are talking about.

The Master: On another item, the labor increase from \$1,256 in 1914 to over \$2,000, in 1917, \$3,500 in 1918, and it jumped to \$6,000 in 1919. I do not think that proves very much.

Mr. Neumann: Well, I will leave the record stand as I have made it.

The Master: Some of them have gone down and some have gone up.

The Witness: Can I ask something?

The Master: No, you better not.

Q. Mr. Allison, it is a fact, is it not, that various parts of a gas plant have various costs, some greater than others?

Mr. Goetz: I object to that question. That is too simple.

Mr. Neumann: It is too what?

Mr. Goetz: It is too simple a question. It is too simple-minded a question.

Mr. Neumann: I would like to know whether counsel meant that seriously or not.

The Master: Read that question.

(The stenographer repeated the question.)

2301 A. Certainly.

Q. For instance, a generator house, we will say for the purpose of this question, would be \$10,000, a meter would be five or six.

Mr. Goetz: I object to that. That assumes costs that have not been shown.

The Master: Objection overruled. I want to see what Mr. Neumann is getting at. I cannot get it myself.

A. A generator house might cost \$10,000, or it might be a little more than that now.

Q. Take, for instance, a year that a generator house had to be replaced as against a year that a meter had to be replaced, taking an extreme case, one year's replacement would be \$100,000 and another year's replacement would be only \$6, would it not, in that extreme case?

A. In your factors assumed, yes.

Q. Certainly, on that assumption.

A. Yes, certainly.

Q. That is a condition that might very well happen, although an extreme case?

A. I stated in one year there would be variations over a cycle of years, where prices had not changed, and I have in mind the level before the war. Over this cycle of years there would be a comparative level. It might be one, two, three, four, five years, and they will vary perhaps from year to year. Now, when prices change there

is a sudden rise in prices or a sudden lowering in prices, and if we get to a new price level there will of course be a change in the figure.

Q In your opinion would it not be a good business judgment to provide for an equalization of these replacements year by year so far as an estimate can be made?

A. They are provided for year by year.

The Master: I am going to stop this. This witness was not called to give testimony or opinions of operating management or business judgment or matters of that kind. He was called to testify to a method of arriving at value.

Mr. Neumann: If the Court please, on the direct testimony you permitted this witness to testify to depreciation.

The Master: Yes, now get to depreciation.

Mr. Neumann: This is one part of it, and this is testing his theories on it. I claim I have the right to go into them fully.

The Master: Ask another question.

Q. Mr. Allison, is it not a fact then that a public utility can by having big retirements in one year and small retirements in the next year, show a large deficit in one year and a small deficit in the next year?

A. Well, that is possible, but it is not usual.

Q. That is true, isn't it, it could be done?

A. It is possible.

Q. Do you know of any case where such a situation has actually occurred?

Mr. Goetz: I object to that.

The Master: Objection sustained.

Mr. Neumann: Exception.

Q. In your judgment, Mr. Allison, isn't it good business policy and principle to have a depreciation reserve to equalize these replacements?

A. To equalize them——

2303 Mr. Goetz: I object to that, if your Honor please, no testimony has been offered——

Q. (continued). And provide for them when they become due.

Mr. Goetz: No testimony has been offered either by the complainant or the defendants that a depreciation reserve should be provided for an equalization of operating expense.

The Master: Objection overruled.

A. Yes, there should be something, there should be no permanent fund, that is, over this cycle of renewal, you should have enough money, except perhaps for obsolescent and perhaps for inadequate but for repairs, things that go out from wear and tear, you should have perhaps enough so you can get equal charges in your rates over a certain number of years. Now, that does not mean, however, that there is to be a large permanent fund created there. The fund to

useful must be used, and the fact is that there is a small accumulation in most companies, and then if there is a large replacement there is a deficit, and that is gradually made up, and it goes back and forth across the line.

Q. Your idea is that it should not be kept in idle cash?

A. No, my idea is that either in cash or anything else there should be no permanent fund for replacement. It must be a fund measured by what is going to be actually used for replacement at any one time.

Q. It may be reinvested in property again?

2304 A. It would not in my opinion be so large—it might be small or large—it might be invested any way you want to.

Q. Do you not know it to be a fact from your experience in these various commissions that they allow such a fund to be reinvested in the property?

Mr. Goetz: I object to that.

The Master: Objections sustained.

Mr. Neumann: Exception.

Q. Have you ever heard of a plant being blown up, a gas plant?

Mr. Goetz: Objected to. That has nothing to do with depreciation.

The Master: Objection overruled.

A. I do not recall any plant being blown up.

Q. Have you ever heard of a plant where there was a fire?

A. There are fires, but that is covered by insurance.

Q. Do you know it was testified to in this case that there was a fire at one of the Brooklyn Union plants——

Mr. Goetz: Objected to. It all relates to all property, whether it is new or old or second hand, no matter what condition it is in, if a fire breaks out the lack of newness or the newness, will not affect the value of the plant.

The Master: What is the point, what are you trying to get at?

Mr. Neumann: The point I am trying to get at is this, and I don't think the witness has quite yet stated it: I want him to state
2305 definitely whether in his judgment the plant should be replaced immediately when it goes out of existence by any cause, or for any reason, and at that particular time.

Mr. Goetz: By explosion or fire? They carry insurance for that.

The Master: What is the point of that?

Mr. Neumann: The point is something that the Master must know from these cases by this time.

The Master: I can't get it.

Mr. Goetz: That is an insurance reserve, not a depreciation reserve.

The Master: I can't understand what you are getting at; I will sustain the objection.

Mr. Neumann: Exception.

Q. Is it your idea, Mr. Allison, that the moment a plant goes out of existence it must be charged up at that particular time that it goes out of existence, for any particular reason?

A. A plant does not go out of existence.

The Master: Oh, I am going to stop these questions about book-keeping matters. The witness was called on the question of value.

Mr. Neumann: What is that?

The Master: I am not going to take any more testimony on keeping books. This witness was called in rebuttal of your testimony that depreciation must be deducted.

Q. You stated, Mr. Allison, in answer to a question, part of your answer was that valuation has nothing to do with value?

Mr. Goetz: I object to that; he made no such statement that valuation has nothing to do with value.

2306 The Master: Answer it if you can, Mr. Allison. Did you say that?

The Witness: I made no such statement as that.

Q. If that is in the minutes——

Mr. Neumann: I made a note of it as he made the statement.

The Master: Next question. He says he never said it.

Q. If the record shows you made such a statement, what did you mean by that?

Mr. Goetz: I object to that.

The Master: Objection sustained. He can't tell you what he meant by it if he never said it.

Mr. Neumann: Suppose the record indicates that he did say that, then I have been deprived of my right to cross examine him as to what he meant.

The Master: No, you have not. He said he never said it. Do you understand what that means?

The Witness: I think what I did say——

Mr. Neumann: He did say it; he may not have meant it.

The Master: Do you understand what that means?

The Witness: I might have meant this, that the term "valuation" is often used in the sense that does not arrive at values at all. If I did say it that is what I meant.

Q. Did you say that cost establishes value?

A. At the time of the cost, the cost is an exchange, and establishes value at that time for that particular piece of property.

2307 Q. That is exchange value, is it not?

A. That is all the value there is. Value is a relation in exchange.

Q. That is what you deal with?

A. The only thing that the word "value" unqualifiedly should be applied to.

Q. Now, take your illustration of your watch. Would you pa

as much for your old watch after you had worn it for twenty years as you would for a new watch?

A. No, but I would pay as much for an old building that was just as good as a new one in its earning power.

Mr. Neumann: I move to strike out the answer as not responsive.

The Master: Yes, strike it out all except the statement "No."

Q. You testified in the Consolidated Gas Company case, did you not, Mr. Allison?

A. One of them; I think perhaps two of them.

Q. I mean the one last year?

The Master: He means the one before the same Master.

A. Yes.

Q. Do you remember this question being asked you by one of the counsel: "How often would you renew, say, the boilers used in the manufacture of gas?" Do you recall that question?

A. No, I don't recall it.

Q. And your answer to it was this: "There are very few boilers used in the manufacturing of gas, but a boiler is rather an exceptional machine, and it is after a while weakened, and on account of keeping up the pressure it will go. It is not subject to the same amount of repairs and the constant repairs as the other machinery." Do you recall that answer?

A. I remember that.

Q. Do you recall the question now?

A. Well, I recall the answer.

Q. That was correct when you gave it, wasn't it?

A. That is correct in regard to boilers, in my opinion.

Q. And that is correct now, too, isn't it?

A. Yes.

Q. So that is at least one part——

The Master: Next question, don't argue. It is getting too late for that.

Q. The next question was: "When a boiler weakens and goes it is all gone, isn't it?" and your answer was "Yes."

Mr. Goetz: I object to that. We have admitted again and again that items of properties go out of service.

A. Yes.

The Master: The witness admits he said that.

Q. The next question is: "How long would you say a boiler was useful?" and your answer was, "It would depend a good deal on its treatment. I have been a boiler inspector, and that is a pretty long question." Do you recall that?

A. No, but I have no doubt I gave it.

Q. Then, to summarize your testimony——

The Master: No, don't summarize any testimony. Ask another question.

Q. Then you do not consider, Mr. Allison, that the consumer should put aside a fund for the replacement of any property, 2309 any item of property as it goes out of business?

A. Not calculated on a falsely estimated life of that item. The consumer should furnish to the company enough to keep its property intact, and that is what they need——

The Master: For ordinary repairs, renewals and replacements?

The Witness: Yes.

The Master: But not amortization of plant.

The Witness: Yes.

The Master: That is where you draw the line of distinction, between amortization of plant and keeping it up.

The Witness: Yes.

Q. And the result of that would be that the investment would not be kept at 100 per cent?

A. It surely would be kept at 100 per cent.

The Master: Anything else?

Mr. Neumann: As I stated at the beginning, I have a lot more, but I could not prepare it in this time.

The Master: Go ahead, I will stay here all night if necessary.

Mr. Neumann: I can't stay here all night. I have not had time to prepare. I had no reason to assume that Mr. Allison would be brought back in rebuttal.

Q. Do you know, Mr. Allison, of any commission or of any court——

The Master: Don't finish that question. I won't allow a witness to be asked whether he knows what any court or commission has ruled.

2310 Mr. Neumann: That is not what I am going to ask him.

The Master: What?

Q. Do you know whether any court or commission has ever accepted or followed your theory?

The Master: That is the same thing as I have already said. Objection sustained.

Mr. Neumann: Exception.

The Master: Anything else now. You are excused, Mr. Allison. Next witness.

Mr. Goetz: That is all, unless something develops.

The Master: Then the case is closed except for the cross-examination of Mr. Spear on that table?

Mr. Goetz: Yes.

Adjourned to Monday, June 28, 1920, at 9.30 a. m.

2311

NEW YORK & QUEENS GAS COMPANY

VS.

CHARLES D. NEWTON, &c., et al.

Before Abraham S. Gilbert, Special Master.

New York, June 28, 1920.

Met pursuant to adjournment.

Present:

Mr. Ransom, Mr. Vilas and Mr. Goetz, of counsel for Complainant.
Mr. Chambers, Mr. Tobin and Mr. Cummings, of counsel for Defendant Newton.

Mr. Neumann, of Counsel for Defendant Lewis Nixon, Public Service Commissioner.

MAYNARD H. SPEAR, recalled for cross examination.

Cross-examination.

By Mr. Neumann:

Q. Mr. Spear, Plaintiff's Exhibit No. 115, was that prepared by you?

A. Prepared under my direction, yes.

Q. What do you mean by that?

A. I had Mr. Foy prepare it, and then I went over it and checked it.

Q. Checked all of it?

A. Yes.

Q. Is this prepared from your books?

A. It is.

Q. And the items as you set them out here will be found in the books?

A. Yes.

2312 Q. In those particular amounts?

A. Yes.

Q. There are no adjustments of any kind or anything?

A. No.

Q. Identically as you set the amounts here they will be found in the books?

A. Well, there are some changes in the amounts as set in the books in order to conform to Mr. Cohen's statement. We made this statement up so that it would conform exactly with his.

Q. You do not find any bad debts on Mr. Cohen's statement, do you; bad debts written off?

Mr. Ransom: You mean uncollectible bills.

The Witness: The uncollected bills are set on here.

Q. Mr. Spear, you understood me to say, "bad debts written off," did you not?

A. Not the bad debts written off; they are not set out separately.

Q. Where are they set out?

The Master: Where is the item, "bad debts" on Exhibit No. 115?

The Witness: They are in the——

The Master: I am asking Mr. Neumann.

Mr. Neumann: I am asking the witness where they are; that is what I am asking.

The Master: I am asking you. What item of "bad debts" on Exhibit 115 are you referring to?

Mr. Neumann: I am referring to an item of \$91.51 that evidently he has included in some account somewhere, probably in General and Miscellaneous Expenses.

The Witness: That is right; that is in there.

2313 By Mr. Neumann:

Q. You do not find any such item in Mr. Cohen's statement?

A. I presume he must have had it in his statement.

Q. Were you here when Mr. Cohen was cross-examined?

Mr. Ransom: I object to the question.

Mr. Neumann: Were you?

The Master: Objection overruled.

Mr. Ransom: Exception.

A. Yes.

Q. Didn't you hear Mr. Goetz ask him whether he had included bad debts written off, and he said, No?

A. I do not recall that; the item is only \$95——

Q. You read the record every day, the stenographic minutes?

A. Oh, yes.

Mr. Ransom: Mr. Goetz calls my attention to the fact that the question was not asked with respect to these three months, the three months' statement covered by Defendants' Exhibit A-20.

Mr. Neumann: The record will speak for itself. I think counsel is going off on a tangent on this very point.

The Master: Proceed now.

Q. Now, Mr. Spear, did your company grant any increases in wages during the last two or three months of 1920?

A. Yes; I think some increases in the office force and some in the shop.

Q. To quite some extent, did they not?

Mr. Ransom: Objected to as vague and meaningless.

The Master: Objection overruled.

2314 A. Not to any very large extent.

Q. How about the works?

A. There may have been some slight adjustment in the works.

Q. What do you mean by adjustments?

A. Increases in wages.

Q. Is that what you call an adjustment?

A. Yes, because they were underpaid before and still are.

Q. How about the superintendent?

A. No increase there.

Q. How about the boiler house labor?

A. I do not recall just what individual increases were made, but some of them were made.

Q. I now show you Plaintiff's—Complainant's Exhibit 54 and direct your attention to page 6. What was the amount for boiler labor in May?

A. \$926.15.

Q. And in April?

A. \$768.25.

Q. And in March?

A. \$787.11.

Q. And in February?

A. 749.03.

Q. And in January?

A. \$779.44.

Q. Now, take generator labor, page 10. What was the amount in May?

A. \$1,698.44.

Q. And in April?

A. \$1,405.07.

Q. And in March?

A. \$1,104.16.

Q. And in February?

A. \$1,222.19.

2315 Q. And January?

A. \$1,489.51.

Q. \$200 in one month?

A. That might have been due to the running——

Q. One moment.

Mr. Ransom: Let him answer.

Mr. Neumann: You can get him on redirect examination if you want to.

Mr. Ransom: You can conceal all the facts you want to now.

By Mr. Neumann:

Q. Miscellaneous labor, on page 18 of the same Exhibit 54, under May 31st, Payrolls, \$293.58.

— You have another item, "Accounts Payable, \$138.39." What is that Accounts Payable?

A. That is probably some outside labor that we hired.

Q. Miscellaneous labor?

A. Yes.

Q. The total therefor would be those two amounts, \$293.58 and \$138.39; is that correct?

A. Yes.

Q. That would be for May?

A. Yes, but that might not all apply in May. It might have been a bill for March or April and passed in May.

Q. What was the amount in April?

A. \$344.14—no; two items in there. That would be \$612.76.

Q. 612.76 in April?

A. Yes.

Q. What was it in March?

A. \$173.69.

Q. And what was it in February?

A. \$141.10.

2316 Q. What was it in January?

A. \$101.51.

Q. You have a cashier there, have you not?

A. Yes.

Q. What is the name of the cashier?

A. Miss Oddy.

Q. Has she been with you since January, 1920?

Q. The same one?

A. Yes, a number of years.

Q. What was her salary for the month of May?

A. I think she gets either \$23 or \$25.

Q. I now show you Exhibit 54 and direct your attention to page 186; what is the amount?

A. \$120.36.

Q. What was it for the month of April?

A. \$120.37.

Q. And what was it for the month of March?

A. \$115.20.

Q. And what was it for the month of February?

A. \$88.10.

Q. And what was it for the month of January?

A. \$90.

Q. Exhibit 54, page 172, "Commercial Department Collection; pp. — Prepayment Meters." How much is the total from the book for the five months of 1920, I mean for the first five months?

A. \$1,013.92.

Q. How much is the total for the first five months of 1919 in the same account?

A. \$711.97.

Q. Now, page 176 of the same exhibit. That contains "Commercial Department Meters Readers;" is that correct?

2317 A. Yes.

Q. The total for the five months of 1920 is how much?

A. \$1,622.67.

Q. And the total for the first five months of 1919?

A. \$1,093.01.

Q. Page 182, "Commercial Department, Supplies and Expenses;" is that correct?

A. Yes.

Q. What is the amount there for the first five months of 1920?

The Master. Can't you read them; can't you say the amount for the first five months is so much.

Mr. Neumann: It is all figured out.

A. \$1,410.01.

Q. No—\$1,437.63.

A. There is a credit in there which brings that to \$1,410.01.

Q. What is the first five months of 1919?

The Master: Give him the figures.

Mr. Neumann: \$730.68.

A. That is right.

Q. Mr. Spear, will you turn to the monthly reports for the year 1919, the monthly office reports—I am not sure that I have correctly described that, but the books are before you—will you tell me from them how much generator coal was used for the first three months of 1920 per M; turn to page 27.

A. Generator coal?

Q. Yes.

A. In three months of 1919, \$3,137,000—oh, you want per M?

2318 Q. Yes.

A. \$1.236 is the cost per cubic foot——

Q. No.

A. 34.2688.

Q. 34.2688.

A. That is the three months of 1919.

Q. Now give me the three months of 1920?

A. 36.5768.

Q. Now, give me the month of April, 1920.

A. Wait a minute, I gave you—I did not give you the right figure; I gave you the five months ending May 31st. You wanted the three months, didn't you?

Q. Yes.

A. 35.9775 is for the first three months of 1920.

Q. Now, give me April, 1920.

A. 36.3842—wait a minute; the month of April was 37.7357.

Q. Give me the month of May, 1920.

A. 37.3648.

Q. You have already given me the figure for the three months of 1919, have you not?

A. Yes.

Q. Now, give me the figure for the whole year 1919.

A. 34.5906.

Mr. Ransom: Don't you want the figure for April and May, 1919?

Mr. Neumann: If the Court please, I would like to try my own case.

The Master: Nobody is stopping you.

Q. Mr. Spear, what explanation have you for the fact that you used three pounds more per thousand in the year 1920; that is, that part of the year that has already passed, as against the same period
2319 for 1919, and also for the entire year of 1919; what explanation is there.

Mr. Ransom: I object to the question; it does not accurately state what he just brought out. He has shown April, 1920, and May, 1920, and has very carefully refrained——

Mr. Cummings: Let the witness answer.

Mr. Neumann: One minute; go ahead with your objection because it is false and you know it. I brought out the first three months of 1920 and the first three months of 1919.

The Master: Let us get this record straight: what is the generator coal used for the five months of 1920?

The Witness: 36.5768.

Q. That is a couple of pounds more?

A. And the five months of 1919 is 34.7380; that is a difference of about 1.8 pounds.

By the Master:

Q. Now, likewise there is a couple of pounds more, or approximately that, for your 1919, entire year.

A. Yes.

Q. Now, what is the explanation?

A. During that period we had some very poor coal.

Q. What period?

A. 1920 as against 1919.

By Mr. Neumann:

Q. What did you do to correct it?

A. We had during the time we were using that coal, the results were naturally poor—

Q. I did not ask you that, Mr. Spear, I asked what you did to correct the fact that you were getting poor coal?

2320 A. We could not do anything about it; that is the only coal we could get.

Q. That has been true of other years, too, has it not?

A. Yes, but this was particularly bad.

Q. How do you explain that the month of April, 1920, was higher than the three months of 1920 that you used 37 plus instead of 35 plus for the previous three months?

A. That was about the time we got that coal in.

Q. Then the 35 plus that you were using for the first three months of 1920 was good coal; is that correct?

A. No.

Q. It was also poor coal?

A. Some of it was, yes.

Q. How do you explain the fact then that in May, 1920, you were still using 37 plus per thousand—still poor coal?

A. We got a cargo of coal in; we usually get between 600 and 700 tons, and that will last us about a month and a half.

Q. I have taken you now over a period of five months; that would be at least three carloads or more?

A. Well, there is only a difference of 1.8 between the five months of 1919 and the five months of 1920.

Q. Do you know what you were using per M in 1918?

A. No, I do not recall now. If you will notice that boiler coal it is less in 1920 than in 1919.

Q. Your books indicate that in that year 1919 the amount used per M was 34.69?

A. For the year 1919?

2321 Q. 1918; that was the year that the Fuel Administrator had the coal situation in hand, was it not?

A. Yes.

Q. And is it not the fact that it was the year that you were getting the poorest coal in the history of gas making companies?

A. I would not say that.

Q. Pretty close to it?

A. We got some poor coal, we got some good coal, but the poorest coal we got was the boiler coal, not so much the generator coal.

Q. The poorest coal you got was not generator?

A. Was boiler only.

Q. How do you explain the fact that you were using so much coal per thousand if you were getting good generator coal?

A. I am speaking now of 1918.

Q. Oh, 1918?

A. You asked me if that was not the poorest coal in the history; I say that the poorest coal we got at that period was boiler coal rather than generator coal.

Q. Are you getting any better treatment than any of the other companies, any preferential treatment?

A. No, I do not think so.

Q. Your situation with reference to coal was the same as all the rest of the gas companies?

A. I think so.

The Master: What do you say it ought to be for generator coal, Mr. Neumann?

Mr. Neumann: I say that it should be not any more than—and possibly less than Mr. Wood said 32½.

The Master: He said 34.

2322 Mr. Neumann: He said in the Consolidated case 32½, and he says that that did not make any difference, whether it was one million or two million or a ten million plant.

Mr. Ransom: Counsel could not have stated that correctly.

Mr. Neumann: Don't say that, because I will show it to you in the record.

The Master: What his statement here is, he says 34—

Mr. Neumann: That may be, but he admitted that he said 32½ in the Consolidated and I confronted him with his testimony that it did not make any difference whether it was one million, two million or ten millions; he said that was immaterial. That point was brought out very materially if any point was.

Mr. Ransom: Mr. Woods' testimony was it would affect a plant of ten million and upwards, and that that was the figure at the time he testified.

By Mr. Neumann:

Q. You have three holders at Flushing, have you not, Mr. Spear?

A. Yes.

Q. And what is their capacity?

Mr. Ransom: Objected to as not cross examination.

Mr. Neumann: I am laying the foundation for some cross examination.

The Master: On this Exhibit?

Mr. Neumann: Yes.

Mr. Ransom: It has been testified to many times, by both sides, that there are three holders.

2323 The Master: 190,000 gallons.

Mr. Neumann: There seems to be some question about it.

The Master: I will let you ask him.

A. One holder is 100,000 cubic feet, another 250,000 feet, and another one one million cubic feet capacity.

Q. When was the million cubic foot holder painted last?

A. This spring.

Q. 1920?

A. Yes.

Q. Did you understand Mr. Miller to testify that that holder was painted in 1919?

A. I do not recall that.

Q. When was it painted previous to that spring?

A. Parts of it had been painted—

Q. When?

A. One lift was painted, part of the tank, in 1919, and previous to that when it was built in 1915.

Q. 1915?

A. Yes.

Q. So that from 1915 down to date it has been painted twice including this spring of 1920; is that correct?

Mr. Ransom: He has not so testified. He said one lift painted last year; part of it had been painted other times.

The Master: Is that correct?

The Witness: Previous to that, there may have been parts painted. If we see that a certain part of the holder needs paint we paint it, and do not necessarily paint the whole holder until it needs it.

2324 By Mr. Neumann:

Q. Did you understand Mr. Miller to testify—you were here court when he testified that it would only take 6,000 to have plant in condition as good as new?

Mr. Ransom: I object to that.

The Master: I cannot understand how this is cross examination.

Mr. Neumann: I will show by the next question.

Q. I now show you Complainant's Exhibit 54, and call your attention to page 54, "repair works and station structures material. You have there under the date of April 30, 1920, "Painting holder \$5,775." Is that the holder you were just describing?

A. Yes, sir. This is painting holders, but it is not an accurate statement, because it included apparatus and buildings as well as the holders.

Q. How do you know that?

A. Because I gave out the contract and watched it while it was being done.

Q. Well, the total amount for that item is \$665.14, isn't that correct?

A. Of repairs, yes.

Q. And alongside of that is "Painting holders, \$5,775," is that correct?

A. Yes, but——

Q. And do you now say that that \$5,775 includes other things besides holders notwithstanding the entry in your book?

A. Oh, yes.

The Master: How have the sales continued during the five months of 1920, compared with 1919, have they increased right along?

2325 The Witness: I think it is an average increase for the first five months of about 22 per cent, or something like that.

The Master: And the ratio seems to be keeping up, does it?

The Witness: No, it is falling off this month.

Q. Mr. Spear, in order that there may be no question about it, you testified, did you not, that this one million cubic foot holder was fully and completely painted in the spring of 1920?

A. Yes.

Q. And the other parts were painted at other times?

A. Yes.

Q. But the whole holder was fully and completely painted in the spring of 1920?

A. That is right.

Q. Now, directing your attention to Complainant's Exhibit 54, and calling your attention particularly to page 58, "Repair Power Plant Labor," is that correct?

A. That is right.

Q. Now, what is the amount there for May, 1920?

A. \$356.88.

Q. For April, 1920?

A. \$253.30.

Q. For March, 1920?

A. \$241.23.

Q. For February, 1920?

A. \$63.38.

Q. For January, 1920?

A. \$289.79.

The Master: Give me May again.

2326 The Witness: \$356.88.

The Master: Well, that is a small bill.

Mr. Neumann: Well, lots of these small items go to make a very

large item if there are enough of them, and there are plenty of them here.

Mr. Ransom: Even salaries of assistant counsel to the Commission have been increased during that time.

The Master: I hope Mr. Neumann was in on it.

Mr. Ransom: He surely was; a much larger ratio than that.

Q. Page 62, "Repair Power Plant Material for May," what is the amount?

A. \$202.75.

Q. For April.

A. \$219.48.

Q. For March?

A. \$119.94.

Q. For February?

A. \$63.90.

Q. For January?

A. \$200.03.

Q. Page 130, "gas mains," how much for May?

A. \$367.92.

Q. How much for April?

A. \$2,442.41.

Q. What is that amount of \$2,248.85, there, that is in April?

A. That is repairs to gas mains on account of building the Myrtle Avenue sewer.

Q. Well, how about March?

A. \$340.01.

Q. How about February, the amount for February?

2327 A. \$35.05.

Q. And how about January?

A. \$117.56. There is not much repairing done in those months, you know, on account of the ground being frozen.

Q. Now, take page 130, meters?

The Master: What do you think, Mr. Spear, will be the average increase in sales during the year, based upon your experience up to this time?

The Witness: I think probably about between 15 and 20 per cent for the year.

The Master: What were the total sales for 1919?

Mr. Ransom: 336,000 ms.

Q. Mr. Spear, page 138, "Repair Meters," I see that uniformly through that account you charge up \$350 a month marked "Suspense." What do you mean by that?

A. When the bills come in each month from the repair shop we put them in suspense, and then charge up a uniform amount so that it spreads it over the period more equally.

Q. In other words, irrespective of what the particular amount may be for that month for repair meters, you charge up \$350 for each month, is that correct?

A. Yes.

Q. Do you have to make any adjustments at the end of the year?

A. Yes, we do.

Q. Either for or against, whichever way it happens to be?

A. Yes, sir.

Q. So that those figures are an estimate and not actual figures?

2328 A. That is an estimate, yes.

Q. Well, are there any other repairs where you use the same method?

A. I cannot recall any just now.

Q. I understood you to say that the reason you put in this estimated figure is to spread it over, is that correct?

A. Yes, sir.

Q. Well, why did you do that in this particular account and not in other accounts?

A. Well, we did this—we have been doing this for some years, that is the reason we continue to do it.

Q. Well, this is exceptional in this case?

A. Yes.

Q. Now, page 149, that page is "Repairs to Appliances," is it not?

A. It is.

Q. Now, what is the total amount for the five months of 1920?

A. \$834.69.

Q. What is the total amount for the first five months, the same corresponding period in 1919?

A. \$479.33. The reason for that is——

Q. Take page 150——

Mr. Ransom: Don't you want his statement of why?

Mr. Neumann: What is that?

Mr. Ransom: Don't you want the facts? What page was the last one you were referring to?

The Witness: 148.

Mr. Neumann: 148 and 149.

The Witness: Here it is.

Q. Take page 156, Commercial Department Labor, the five months of 1920, the total is how much?

2329 A. \$2,359.20.

Q. What is the total for the five months of 1919?

A. \$1,117.55.

Q. Now, take page 160, Commercial Expenses, what is the total for the five months of 1920?

A. \$3,389.73.

Mr. Neumann: I will withdraw that, I must have given you the wrong page.

(Discussion off the record.)

Q. That was the correct page. Now, what is the total for the first five months of 1920?

A. \$3,389.73.

Q. Now, the same total for the first five months of 1919?

A. \$2,002.17.

Q. What is the total for the month of May, 1920?

A. \$845.35.

Q. What is the total for April, 1920?

A. \$673.81.

Q. For March, 1920?

A. \$600.45.

Q. For February, 1920?

A. \$597.58.

Q. And January, 1920?

A. \$672.54. One reason for that is that we have been doing—

Mr. Neumann (interrupting). I move to strike that out.

The Master. Let me ask you, Mr. Spear: some of these expenses such as Repair Expense, won't show up again during the balance of the year, will they?

The Witness. On the painting, but we will still have so many repairs on apparatus as we go along. For instance, in July we just reined our No. 3 set.

Q. Now, page 164, Commercial Department Contracts, 1920, total for the five months is how much?

A. \$203.23.

Q. For the first five months of 1919?

A. \$142.88.

Q. Now, take page 194, Canvassing and soliciting, what is total for the first five months of 1920?

A. \$1,047.70.

Q. What is the total for the five months of 1919?

A. \$826.93.

Q. Now, take—

A. (Interrupting.) You will find that that difference is reflected in the other income.

Q. What do you mean by that?

A. In your statement there of the other revenues, you will find that we ran something like \$4,000 more in the sale of appliances in 1920 than we did in 1919.

Q. And spent one hundred per cent more in repairing them.

A. Not in repairing them, this is soliciting them.

Q. But your repair bills went up of every kind?

A. Yes.

Q. Including repairs to appliances?

A. Yes.

Q. Enormously. Take page 209, Vacations and Sickness, is correct?

A. Yes.

Q. What was it in 1920, five months?

A. \$177.48.

2331 Q. I see that you only have two months there?

A. Yes, we only started the account at that time.

Q. That is a new account, is it?

A. Yes.

Q. Absolutely new in 1920, and in April it began?

A. Yes, we wanted to separate it and see how it came out.

Q. Now, take page 254, Relief Department and Pensions, is that correct?

A. Yes.

Q. Does that include Vacations and Sickness?

A. No.

Q. Did it in the year 1919 contain it?

A. No.

Q. Didn't it in any year?

A. No—well, only in the—no, it does not.

Q. I am talking about 1919.

A. So am I.

Q. Well, where did you take care of vacations and sickness in former years, prior to the time you opened that account, Vacations and Sickness, in your Ledger for 1920?

A. In the office payroll. We opened that now so as to see what the sickness amounted to in our weekly salaried people.

Q. And prior to that time you had never had any account showing vacations and sickness?

A. No.

The Master: Did you pay the employees whenever they were sick and on vacations?

The Witness: Yes, weekly employees.

The Master: Just ran it through as a regular pay?

The Witness: Yes.

232 Q. Now, take the account that you have before you at page 254, what is the total for the five months of 1920?

A. \$359.77.

Q. What is the total for the five months of 1919 for the same period?

A. \$187.30.

Q. Now, take page 215, the total amount of that account is how much, that is entitled Rate Case?

A. Do you mean for the five months?

Q. Yes, for the five months.

A. \$2,448.85.

The Master: For 1920?

The Witness: In 1920.

The Master: And in 1919 how much?

The Witness: \$15,518.73.

Mr. Tobin: That is the entire year?

The Witness: No, it is only a three months' entry here, October, November and December.

The Master: But you did not have any for the first five months of 1919?

The Witness: No, that is for work done during 1919.

The Master: Well, \$2,000 for five months is much less than that proportion would represent for a year, last year?

The Witness. There are a lot of bills we have not received yet that belong in that rate case. There is nothing for counsel in there yet.

Mr. Ransom. I can testify that that amount is very incomplete.

Q. Mr. Spear, that amount of \$2,498.85 in 1920 contains a bill of \$500 for the Heller Agency. What is that, do you know?

2333 A. Halleren Agency?

Q. No, Heller.

A. I do not recall the Heller Agency at all; I don't know any such concern.

Q. Well, Halleren agency, what is the Halleren Agency?

A. Well, it is probably appraisals on the property and testifying.

Q. How about C. J. O'Connor, he was the witness who testified here?

A. Yes, P. J. O'Connor.

Q. How much did you pay him?

Mr. Ransom. I object to that.

The Master. I will take it, if Mr. Spear remembers.

The Witness. Oh, I think he charged us \$30 or \$40 for an appraisal and \$15 a day for testifying.

Q. What was that amount paid the Bartlett-Hayward Company, \$1,707.73?

A. That is for work that Col. Miller and his staff did.

Q. What year?

A. Which amount is that?

Q. \$1,707.73. That is paid in 1920.

A. Well, my recollection is, I would say it is work done in 1920.

Q. Take page 221, Law Expenses Connected with Claims and Arrears, what amount is that?

A. For the five months?

Q. Yes.

A. \$264.68.

Q. What kind of claims are those?

A. Against final bills of consumers.

Q. What suits that you had to bring?

2334 A. No; that might be going out to collect them after they had moved away, following up their new addresses to get them.

Q. Who is that amount paid to?

A. The Consolidated Gas Company, their Claims and Arrears Department. Any final bills that we cannot collect we send over to them.

Q. How long were those bills standing, do you know?

A. Oh, I would say probably six months or more.

Q. And is that your usual practice, when you cannot collect a bill to send it over to the Consolidated Arrears and Collections Bureau, or whatever it is called?

A. Yes.

Q. That has been so for years, has it?

A. Several years, yes.

Q. Now, take page 222. That account is insurance, is it not?

A. It is.

Q. And this book runs back as far as 1919?

A. Yes.

Q. Uniformly you have been charging \$275 per month for insurance, have you not?

A. Yes, with an adjustment—

Q. (Interrupting.) During the year 1919?

A. Yes.

Q. That has also been true during the years 1918, 1917 and 1916, is that correct?

A. I do not recall about that.

Q. Well, it has been your uniform practice to charge \$275 a month for insurance, is that correct?

A. Well, I would not say that it was prior to 1919.

2335 Q. Well, would you want to look up your other books so that there can be no question about it?

A. I do not think it would be fair because there is an adjustment made in December here of \$698.01, showing there was a charge too little in those previous months.

Mr. Neumann: I move to strike the answer out as not responsive. The Master: Motion denied.

Mr. Neumann: In other words, may a witness come here and volunteer any information that is not in answer to any question and the Master permit it to stand on the record?

The Master: No.

Mr. Neumann: Exception.

The Master: But this statement I will allow to stand.

Q. Now, take the year 1919 on this account here at page 222, uniformly you have charged \$275, and then at the end of the year, December 31, 1919, you have charged \$678.01, is that correct?

A. Yes.

Q. And, by the way, that figure has been charged out, the original figure that was there, and another figure written in there, is that correct?

A. Yes.

Q. Now, then, beginning with 1920, you paid insurance \$275 each month, including January to April?

A. Yes.

The Master: Including April.

Q. Including April. And May 31, 1920, \$275 written in there originally, then stricken out with red ink and \$510 written over it, is that correct?

2336 A. That is right.

Q. Now, what is that \$510 in May, 1920?

A. Well, we found that we were charging too little for the first four months, after we got our bills, and then figuring up what our insurance would be.

The Master: That would indicate that that insurance would probably be a little over \$6,000 a year; is that correct?

The Witness: A little less than \$6,000.

The Master: \$510?

The Witness: But there is \$275 charged for four months. We cannot always tell at the beginning of the year, until we get our bills and then figure it up.

The Master: I see.

Q. Well, now, tell us why you did not wait until December in order to adjust this account, as is indicated by your previous account in 1919?

Q. Well, now, tell us why you did not wait until December in order to adjust this account, as is indicated by your previous account in 1919?

A. Because I think it is better accounting to get it as near as possible, without a large adjustment at the end of the year.

Q. You did not think so in 1919, did you?

A. I did think so, yes, but I did not pay any attention to it.

Q. And you did not think so in 1918? I mean you did not adjust it until the end of the year 1918?

A. I do not recall.

Q. Well, have you your books here?

A. No.

Q. Have you your books here for 1917 or 1916?

A. No.

2337 Q. Well, the fact is that you did the same thing identical in 1918, 1917 and 1916 as you did in 1919?

The Master: Is it?

Mr. Neumann: Yes, it is.

The Master: I am asking Mr. Spear.

Mr. Ransom: We have here only the books that Mr. Neumann called for.

Mr. Neumann: Adjusted at the end of the year.

The Witness: It may have been.

Q. And in those years you did not consider it necessary to make an adjustment in the month of May?

The Master: That is quite consistent and that is possible. He may have found as he was going through 1917, 1918 or 1919 that the amounts charged off would be approximately correct, and it only required an adjustment of \$600 at the end of the year, and when he got his bill here in May he found it was too small, and he started to readjust right away.

Mr. Neumann: Well, isn't it also conceivable that it might have been thought necessary in view of the rate case and in view of the fact that they wanted to get a statement that would show very large expenses for the year 1920?

The Master: Certainly.

Mr. Neumann: That is just as consistent, and probably more so, than the other suggestion.

The Master: Well, you have a basis for argument.

2338 The Witness: At the same time, that is not a fact, Mr. Neumann.

Mr. Neumann: And probably the most significant indication of the whole thing is that all of these accounts have suddenly increased in April and May, 1920.

The Master: Well, I think——

Mr. Ransom (interrupting): Continuously increased.

The Master: You have got to assume that business men are not inclined to take it for granted that all courts are stupid and that courts can be foiled by something of this kind, if it is not a fact and a necessary expense. Now, personally, I am inclined to view the situation from a coincidental basis; in other words, that it is a coincidence that these items have increased so substantially in the latter two months or the last two months or the first five months of this year. I am not disposed, ordinarily, to assume that people are crooked or dishonest.

Mr. Neumann: There was nothing like that in my suggestion.

The Master: Well, that is bound to follow. If they deliberately raised salaries——

Mr. Neumann: No, I say this——

The Master (interrupting): And painted holders——

Mr. Neumann: I say this, that even assuming that they did it in absolute good faith, that it is not a safe basis; it is an abnormal year.

The Master: That is a different thing. If you want to argue the proposition with me that I ought not to take the five months of 1920 as a basis of calculation, then you will lead to the point where you have got to tell me to disregard three months of 1920.

Mr. Ransom: Five months is certainly better than three.

The Master: I don't know about that. It may well be that in these last two months you have put in expenses necessarily coming at that particular time, and items in good faith incurred and moneys expended——

Mr. Neumann (interrupting): We have been yelling all along while the complainant was putting in their three months' exhibits that nothing less than a year is a safe criterion.

Mr. Ransom: We put in no three months' exhibits; they brought them in.

Mr. Neumann: That is certainly incorrect, because Mr. Spear introduced an exhibit——

The Master: You men don't have to argue what happened here.

Mr. Neumann: Well, I hate to have counsel say a thing that he knows is wrong.

The Master: Well, here is the situation, take the year 1919, it is conceded by the defendants that based upon the books of the complainant company they lost five cents on every thousand cubic feet of gas they sold. Start off with that——

Mr. Neumann: Well, we should have their books, because there are many items that we dispute.

The Master: I understand that, but based on their books, your exhibit, Exhibit 120, indicates——

Mr. Ransom (interrupting): A-20.

2340 The Master: Your Exhibit A-20 indicates that they actually lost five cents on each thousand cubic feet of gas sold. Now, I start off with that as a basis, having in mind that you question some of the items included there in the year 1920. It would appear pretty clearly that certain salaries have been increased. I do not believe the Gas Company has deliberately increased the salaries of employees for the sake of making evidence in this rate case. I think that those salary increases probably were necessarily and reasonably made. On the other hand, it is quite apparent that the sales this year will increase, which will proportionately decrease their per-thousand-cubic-feet operating expenses, that is commercial expenses and matters of that kind, and taxes, per thousand cubic feet.

Mr. Ransom: Many expenses go up in proportion to sales, and Mr. Neumann fails to take that into account. The commercial expenses and the expenses in connection with the plant department go up with sales.

The Master: Yes, but when you spread some of those items over the sales, you reduce the cost per thousand, there is no question about that. What I am confronted with is the question of reaching a conclusion based upon the 1919 full year in the light of what has happened in 1920, taking everything into consideration, as to what the net result is going to be for the whole year 1920. What I have got to contend with—

Mr. Neumann: Does not your Honor overlook the fact that the burden is cast upon the complainant as to showing that their plant is economically and efficiently operated?

The Master: Yes, I understand that.

Mr. Neumann: It is not up to us to show that this is done, that is up to them to show that it is in the beginning.

The Master: The trouble with that is, Mr. Neumann, I have been giving it some thought this morning, and if I were to take 1919 as the basis, where the generator coal was pretty close to where it should be over there, about 34 pounds, having in mind some other items that must be adjusted, there were one or two items that appear from the books to be in excess of what Mr. Woods testified they ought to be, possibly because there was a laying-in of supplies or some extra repair work done, I won't get a correct result because it is quite apparent that the sales have increased this year, and will continue to increase, and the average during the year, as Mr. Spear says, will be fifteen to twenty per cent; it may be a little more when they get through with the Douglaston Extension and get it in operation.

Mr. Ransom: There is no evidence that it will be more than that.

The Master: Well, I say—I do not say that there is evidence, but I say it may be for all I know; but Mr. Spear says that based on five months it would indicate that an increase in sales of fifteen to twenty per cent.

Mr. Ransom: The sales manager always thinks he is going to have very large sales.

2342 Mr. Cummings: Well, don't dispute Mr. Spear now on that.

The Master: I am assuming that Mr. Spear knows his business well enough to give me a fair estimate.

Mr. Ransom: But there is no evidence that he has not understated or overstated.

The Master: That may be true, *cys*, but it does vary the conditions I find for 1919 somewhat. I am also satisfied that there has been an increase in expenses, especially as to labor.

Mr. Ransom: And coal.

The Master: And as to material.

Mr. Ransom: As to coal, much more than the increase in sales.

The Master: And it makes it very difficult to get at any definitely accurate figures. Go ahead and finish your case.

Mr. Tobin: In this discussion the defendant Newton does not want to have it said that we are taking any one year 1919 or 1920 as the basis to establish a rate. We maintain that it should be taken over the period of years.

The Master: Go ahead, Mr. Neumann.

Q. Turn to page 236, Stable Expense, 1920, how much?

A. \$1,725.62.

The Master: For five months?

The Witness: \$1,542.01.

Q. For five months?

A. Yes, for five months.

Q. 1915, five months?

A. \$880.48.

2343 Q. Page 242?

A. That stable expense, you know, feed is more than double, horses and gasoline—

Mr. Neumann: I move to strike out the witness' answer. He has already given his answer complete, and this is something new.

Mr. Cummings: Did you say the horses ate more, Mr. Spear?

The Master: I will let it stand.

Mr. Neumann: In other words, the purpose here is quite clear, that any witness for the complainant can make any statement even after a question is closed, and the answer given, and the rest of the answer afterwards volunteered will not be stricken out.

Mr. Ransom: I object to the statement as an unwarranted reflection on this Court, and intended to be so.

The Master: You will notice he carefully refrained from saying I did not give their witnesses the same opportunity, so there was no reflection on me.

Mr. Neumann: I simply stated what the facts were, and I am in the habit of stating them fairly.

The Master: It might be criticised as not a full and complete statement of the Master's attitude, that is all.

Q. Pages 242 and 243, what is the amount, "Repair Automobiles"?

The Master: You know, after all, Mr. Neumann—

Mr. Neumann: One minute, until I finish this question.

The Master (continuing): After all, the purpose of a trial is to elicit the truth.

2344 Mr. Neumann: Yes.

The Master: Rules of evidence are simply for that purpose.

Mr. Neumann: And to see that we do not get very far afield.

The Master: It makes very little difference whether a witness volunteers an explanation following a question on cross examination, or whether it is reserved for redirect examination and then we get it.

Mr. Neumann: But it certainly is not orderly procedure in accordance with the rules.

The Master: Well, I should prefer that Mr. Spear did not volunteer, and that Judge Ransom bring out the explanation on his redirect, but when he does volunteer in that way, it does no harm and simply saves a redirect question.

Mr. Neumann: I would like to call the Master's attention to this, that there are several instances in this record where we endeavored to bring out the explanation of a thing right there, and the Master directed us to bring it out in our part of the case.

The Master: Well, I do that now as to Judge Ransom, but I do not believe in striking things out. I think it is a waste of time.

Q. What is the amount, Mr. Spear, of these repairs autos for the five months of 1920?

A. \$2,184.41.

Q. And for the same period of 1919?

A. \$1,327.03.

Q. Now, Mr. Spear, in your Exhibit 115, there is reflected the unaccounted for gas, is there not?

A. How do you mean, reflected?

2345 The Master: You take into account unaccounted for gas.

The Witness: Well, this is all showing the gas sales, not the gas made. Of course, the unaccounted for is the difference between the gas made and the gas sold.

Q. Well, does this statement in any way reflect the unaccounted for?

A. The unaccounted for cannot be figured from this.

Q. It could not?

A. No.

Q. Have you the unaccounted for in any book before you?

A. Yes, I think it is in the report.

Q. Now, take the month of May, 1920, what is the unaccounted for for the month of May, 1920? I mean the percentage of unaccounted for?

A. The unaccounted for uncorrected is 8.42, and corrected 10.50.

Q. For May?

A. For May.

Q. Well, you are reading 1919, and I am talking about 1920?

A. No, 1920, I am reading, and that is five months. I beg your pardon 17.29 uncorrected and 16.66 corrected.

Q. Now, what is it for the month of April, 1920?

A. 5.15 and 8.66.

Q. Now, what is it for the month of March?

A. Nothing uncorrected and 4.75 corrected.

Q. What was it for the month of February?

A. 3.8 and 11.04.

2346 Q. And what was it for the month of January?

A. 10.84 and 11.59.

Q. Now, what was it for the first four months of 1920, corrected?

A. \$9.06.

Q. What was it for the entire year 1919?

A. 11.02 and 9.59.

Q. 11.02 is uncorrected and 9.59 corrected.

A. Yes.

The Master: How did it run up as high as 16 per cent in May?

The Witness: Well, I don't know any specific reason for it. The unaccounted for will vary.

Mr. Neumann: Your Honor notices that that is almost four times as much as in March.

The Master: Four times and 400 per cent means nothing to me; I have noticed the figures.

Q. You know Mr. Charles Thomas, do you not?

A. I do.

Q. Is he one of the directors and officers of your company at the present time?

Mr. Ransom: Objected to, that has already been testified to two or three times.

The Master: What is the purpose of it?

Mr. Neumann: Well, the next question will show it:

Q. Mr. Thomas is the same man who was one of the officers of the Newtown & Flushing Gas Company that we are speaking of?

Mr. Ransom: Objected to; that has already been gone into weeks and months ago.

The Master: I will allow it.

A. Yes.

2347 Q. He is still alive, isn't he?

A. He is.

Q. You have seen him around here in court even during the trial of this case?

A. Yes, occasionally.

Q. You did not keep the minutes of the Board of Directors in 1904, did you?

A. No, but there is one question unanswered there: you asked me if Mr. Thomas was an officer or director of our company. He is not.

Q. I understood you to answer that way.

A. There was an objection; that is the reason I did not answer.

Q. Well, is he in any way connected with your company?

A. He is not.

Q. When did he sever his connection with your company?

A. In 1907.

Q. You know where to reach him, do you not, if you want him?

A. Why, I don't know at the present time. If I had to reach him I would reach him at the Consolidated office when he is there.

Q. Yes, I mean you could reach him there or through the Consolidated; he is connected with the Consolidated Company, is he not?

A. Yes, Vice-President.

Q. Mr. Gawtry, who testified here as to the price of coal, he was one of the directors or officers of either the Newtown & Flushing or the New York & Queens in the year 1904—that is the same Mr. Gawtry?

A. Yes.

2348 Q. And you know where he is and where you can reach him?

A. Yes.

Redirect examination.

By Mr. Ransom:

Q. What was the unaccounted for gas, Mr. Spear, for the five months of 1919, corrected?

A. 8.52.

Q. Five months of 1920?

A. 10.50.

Q. Is that corrected?

A. Yes.

Q. What was the unaccounted for corrected for May, 1919?

A. 16.66—no—

Q. Take your time and don't be confused by all those men at your elbow.

Mr. Neumann: Let the record show that Mr. Cohen and Mr. Neumann are standing at his elbow.

Mr. Cummings: And that Mr. Spear has trouble finding his record.

Mr. Ransom: I should think he would under those conditions.

The Witness: 2.71 corrected.

Q. You started to make some explanation with respect to pages 148 and 149 of the operating expense ledger when you were shut off?

A. I was going to say that the figures—

Q. What is that item?

A. That is repairs of appliances.

Q. Yes.

A. I was going to say that the increase in the cost this year as against last year is due to a considerable extent to the fact that we have brought in more of the rental appliances this year than
2349 last year in that same period.

The Master: For repair?

The Witness: Yes. Every time a rental appliance is brought in, it is repaired and overhauled.

Q. Page 160, you started to make some explanation about that?

A. That is Commercial Department accounting. I was going to say that a part of that increase for the five months of 1920 over the same period for 1919 is due to the fact that we are paying our bookkeepers this year for overtime, which we did not do last year.

Q. Is this Mrs. Oddy, the cashier, paid on a monthly or weekly basis?

A. A weekly basis. She is also paid for overtime this year as against not receiving any last year.

Q. During this time she has been doing regular office work which could not be done within the usual working hours by one person?

A. Yes.

Q. And if she had not done this overtime work would you have had to employ an additional person?

A. Yes.

Q. And you regarded it as more economical to pay her for overtime than to put in — additional employee?

Mr. Neumann: That is objected to on the ground it is immaterial, irrelevant and incompetent, and that is for the Master to find and not for this witness to say.

The Master: Well, I will let him say.

2350 Mr. Neumann: Exception.

The Master: Would it be more economical to hire some one else?

The Witness: No, it would not.

The Master: By that I mean, would it cost more to hire an outside person than to pay her overtime?

The Witness: Yes, it would.

Mr. Neumann: The objection to this thing is that there is nothing here to show what they pay out, what she does and what they could get somebody else to do the same work for, whether they are paying her more than they could get anybody else, and that is all left without explanation.

The Master: What salary did you pay her?

The Witness: It is either \$23 or \$25 a week.

Mr. Neumann: The salary jumped from \$90 to \$120 from January to April.

Mr. Ransom: No, she is paid on a weekly basis, and there are an uneven number of pay days in a month.

The Witness: And she is underpaid, too. In fact, all of our salaried employees are underpaid. Take, for instance, at the plant, we have an engineer there now getting \$5.25 a day, and he has been with us a number of years, and right outside of our plant they are place during this year?

Q. Street work?

A. Yes.

Q. Is it your judgment that you could have maintained your labor forces without the increases in compensation that have taken place during this year?

2351 Mr. Neumann: Objected to on the ground it is incompetent, irrelevant and immaterial, wholly speculative about

something which the Master himself will have to determine himself, and not the subject of expert testimony.

The Witness: No, we could not, and it is an awful job to hold them today at the boost in prices. We are paying common labor at our plant \$4 a day, 50 cents an hour, and as I said before, they are paying \$6 a day for common labor right outside the plant.

Q. In connection with sewer work?

A. Yes, the contractors in Flushing are all paying \$6 a day.

By Mr. Ransom:

Q. Have your insurance rates for 1920 increased substantially as compared with your rates in previous years?

A. I could not state positively in regard to the rates.

Q. Your total payments for insurance?

A. Yes, that is much higher, and then another thing that would increase that, we revalued our buildings and plants.

By Mr. Neumann:

Q. When?

A. This year, we revalued it a couple of years ago and revalued it again this year.

Q. What time did you do it this year?

A. I think it was about February or March.

The Master: You do not claim that that is poor business, do you, Mr. Neumann?

Mr. Neumann: I will let the facts speak for themselves.

2372 The Master: Well they speak very loudly to me, because

I know as a matter of practical everyday experience that I am advising my clients to keep watch on this insurance of theirs, have it reappraised.

Mr. Neumann: That item standing by itself might not be significant, but when you correlate it with twenty or thirty different items, as I have shown on the record here, and show substantial increases, and the fact that they have come into operation this particular year, and in February, March, April and May, I think they speak very loudly.

The Master: But you do not answer my inquiry, whether you think there is any vice to be charged to the Complainant company in having their plant reappraised, and carrying more insurance.

Mr. Ransom: It would be negligent if they did not do it.

Mr. Neumann: I answer that by stating what I said.

The Witness: I received a regular printed letter from the insurance agents, Owen & Phillips, who carry the insurance on my house—

Mr. Neumann: I move to strike out the witness' statement with reference to his house; it has nothing to do with this case.

The Master: That motion will be granted.

Mr. Ransom: Exception; that has much to do with the basis of the witness' judgment.

By Mr. Ransom:

Q. In previous years your insurance had cost you a little under \$4,000, \$275 a month, about \$600 additional at the end of the year in 1919—

2353 The Master: Those figures speak for themselves.

A. I do not recall just what the figures show.

The Master: I have already asked Mr. Spear about that.

Mr. Ransom: It showed about \$2,000 increase.

The Master: Not necessarily, he explained that. He said it does not mean \$6,000, just because he started with \$500. You take 7 times 500 is 3,500, and 5 times 300 would be 1,500—it would be about \$5,000.

Mr. Neumann: One of our exhibits shows insurance year by year.

Q. Who had the contract for this painting of the holders and the apparatus?

A. That is Vasseleros Contracting Company.

Q. Your attention has been called to an entry in the Operating Expense Ledger of painting of holders, an item of approximately \$6,000 which you said included under the contract painting also of certain apparatus—

Mr. Neumann: One moment; that is objected to on the ground that it is incompetent, immaterial and irrelevant.

Mr. Ransom: I have not asked a question yet.

Mr. Neumann: Since it now appears there is a contract, the contract is the best evidence, not what this witness says.

By Mr. Ransom:

Q. Is that one of the vouchers which is in evidence?

Mr. Neumann: I make the same objection.

The Master: Objection overruled.

Mr. Neumann: Exception.

2354 A. Yes.

Q. And as a matter of fact, was there an adjusting entry in the following month, the month of May, which transferred part of that sum of painting holders to the account of painting apparatus?

A. Yes.

Q. Can you find it in the Operating Expense Ledger?

Mr. Neumann: That is on page 68; we will give you the page.

A. On page 54 of Exhibit 54, Repairs to Works, Stations, Structures, in April is a charge, painting holders of \$5,775, and in May there is a credit of \$3,975 to the Repairs to Works, to Stations, Structures, and a charge on page 73 to Repairs to Gas Apparatus, \$3,975.

Q. Representing the part of that work which had been done upon apparatus?

A. That is right; instead of on buildings.

Q. How much of a supply of coal has your company now on hand?

Mr. Neumann: I object to that on the ground that it is incompetent, immaterial and irrelevant and not proper rebuttal; not proper cross-examination.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. At present about 600 tons.

Q. That is generator coal?

A. Generator coal. We are trying to get 2,000 tons of coal by the first of August because the sewer contractors figure that they will have our street open at that time, and it will probably be closed for two or three months, so that they cannot get in or out, and we are finding it the hardest job in the world to get the coal.

Q. That is because of the general shortage in this vicinity?

Mr. Neumann: I object to that on the ground that it is incompetent, immaterial and irrelevant and not proper for the witness to say, he not being qualified.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. Yes. I wanted to get the Lehigh & Wilkes-Barre——

Mr. Neumann: I move to strike out the witness' answer; this is all voluntary; there is no question before the Court now.

The Master: Motion granted.

Mr. Ransom: He has not finished his answer.

The Master: He is volunteering.

Q. What price are you now paying for generator coal?

Mr. Neumann: That is objected to on the ground that it is incompetent, immaterial and irrelevant and not the proper way of proving it.

The Master: Objection overruled.

Mr. Neumann: Exception.

A. About \$10.25 a ton.

Q. That is with or without——

A. At the dock.

Q. What do the stevedores charge?

Mr. Neumann: I object to that on the ground that it is incompetent, immaterial and irrelevant and for the reason that it is indefinite and vague; there are a great many elements that counsel has not put in his question.

Objection overruled.

Mr. Neumann: It is incompetent for this witness to answer that question in the form as stated.

The Master: Objection overruled.

Mr. Neumann: Exception.

Mr. Tobin: There is the further objection that the contracts themselves would indicate the prices, and not what this man testifies to. The testimony here is that the coal year runs from April to April.

The Master: The testimony likewise is that coal years are up in the air now.

A. Approximately \$1.25 a ton.

The Master: To get them from the dock to your works?

The Witness: Yes.

Recross-examination.

By Mr. Neumann:

Q. Now, is that Journal entry that you referred to, Claimant's Exhibit 53, page 288?

A. The second entry from the bottom, yes.

Q. \$3.975, and the reading, "For painting done on holders and other gas apparatus in April, and charge to account 8 in error"?

A. Yes.

Q. That is at the bottom of the page?

A. Yes.

By Mr. Tobin:

Q. What amount is included in your Schedule last presented by you for fees or compensation paid to auditors or to the directors of the company?

2357 A. You mean in this exhibit introduced this morning?

Q. Yes; Exhibit 115.

A. It is included in General and Miscellaneous Expenses?

Q. Yes.

A. \$180 a month, including the auditors.

Q. \$180 a month?

A. Yes, so that would be \$900 for five months.

Q. Does it not show some increase over the five months of 1919 in that particular item?

A. I do not see how it could.

Q. The compensation is exactly the same?

A. Yes, since last year.

By Mr. Ransom:

Q. What are the Directors' Fees?

A. \$140 a meeting, one meeting a month, unless we call a special meeting, which is very rare.

Q. And what is the compensation of the Auditing Committee?

A. \$40—\$20 a piece.

By Mr. Tobin:

Q. That is \$20 a piece?

A. Yes.

By Mr. Ransom:

Q. Two members of that committee each get \$20 a month for the audit?

A. Yes.

By Mr. Neumann:

Q. Mr. Spear, can you refer to that readily in the books which you have before you to verify it, whether there has been an increase you said you do not recall?

Mr. Ransom. He said he did not see how that could be.

2358 A. No, I cannot refer to the details of that now.

Q. Are not these amounts charged up in your regular books?

A. Yes.

Q. And haven't you your books here?

Mr. Ransom: We have all the books that counsel for the Commission called for.

Mr. Cummings: By reference to the bookkeeper you can determine that if there is any question about it.

A. I do not know whether I could pick it out of the General Ledger or not. It would be under General Miscellaneous Expenses but I do not know as I can pick it out.

Mr. Neumann: You have the black book before you; that book will show it.

Mr. Ransom: Are those Directors' Fees paid through the petty cash?

The Witness: Yes.

By Mr. Neumann:

Q. You have the black book before you; that will show it?

A. That will not show the details.

Q. Show the amount?

A. No.

Mr. Neumann: Will you let me have the black book?

By Mr. Ransom:

Q. If a director is absent is he paid?

A. No.

By Mr. Neumann:

Q. Have you got the Minutes of the Directors' Meetings?

A. No, not now.

2359 Q. How do you know then that a director is absent?

A. Because I attend the meetings.

Q. Are you one of the directors?

A. No.

Q. In what capacity do you attend the meetings?

A. As general manager.

Q. Of the company?

A. Yes.

Q. And you do not keep any minutes of the directors' meetings?

A. No. I go over the minutes after the meeting with Mr. Raynor.

Q. Mr. Raynor is the man who keeps the minutes?

A. Yes.

The Master: Are we all through now?

Mr. Ransom: I had arranged yesterday to have Mr. Addicks here and he has agreed to be here, but he got called into a conference on this coal situation, due to the jeopardy in which the public utilities find themselves, he said that he would be through so that he would be here by eleven o'clock.

Mr. Tobin: I ask that these remarks of Mr. Ransom as far as the coal situation is concerned be excluded from the record.

The Master: I do not think that will do you any good to exclude that from the record, it is still in my mind. The articles in the public press are authentic, apparently.

Mr. Ransom: If the counsel for the Public Service Commission will produce a copy of the telegram which the defendant Public
2360 mission I will withdraw my application to have Mr. Addicks' testimony taken.

Mr. Tobin: All stage play.

Mr. Ransom: Have you got the telegram?

Mr. Neumann: I do not know what to say to counsel, former counsel to the Public Service Commission, except to say that I thought he was a lawyer. I am satisfied he is not.

Mr. Ransom: That is a high compliment from such a source.

The Master: Is there anything else?

Mr. Ransom: I hoped to close with Mr. Addicks' testimony.

The Master: Is there any way of finding out whether he will be down here?

Mr. Ransom: He was called into this coal conference. He said yesterday he had nothing in the way and then they had this conference called suddenly and he said he would be here by eleven o'clock.

The Master: Can you reach him on the 'phone?

Mr. Goetz: He said he would be here between eleven and twelve.

The Master: I will wait a few minutes; I am not going to adjourn the matter for him.

While we are waiting to dispose of the Addicks' situation, I take it

that that will end the case with Addicks, will it, with or without Addicks?

Mr. Neumann: Your Honor of course will stand by your ruling that you will not permit those exhibits in which you have stricken out from the record.

2361 The Master: The opinions or decisions of the Public Service Commission?

Mr. Neumann: Where they set forth the various proceedings, setting forth the various proceedings that this company took. It would simply mean that we would have to comb all the records of the County Clerk's office and bring over here voluminous records to fill up this record, where the various facts are stated in the opinion.

The Master: I think you have got enough on the record to make your contention that this company fought off the Douglaston Extension by every legal means at their command for years.

Mr. Neumann: Over a period from 1915 to 1919.

The Master: I said four years.

Mr. Neumann: And took the case right through to the Court of Appeals and to the Supreme Court of the United States.

The Master: Yes; as they had a perfect right to do.

Mr. Neumann: And thereafter began two certiorari proceedings.

The Master: As they had a perfect right to do.

Mr. Neumann: Beginning the entire thing over again.

The Master: As they had a perfect right to do, so long as they felt that the Commission's orders were unjust.

Mr. Neumann: But after the Supreme Court of the United States had decided against them, then the litigation should have ended even there.

2362 The Master: Not necessarily.

Mr. Tobin: Then, there is also, we would like the Master to again rule on the reports of the company to the State Board of Tax Commissioners, and the complaints filed with said Commissioners on the question of franchises.

The Master: No; I will not consider that.

Mr. Tobin: For this reason. You allowed the complainant company to put into the record all of the incorporations, the mergers, the deeds, the leases, and all else which had to do with the activities of this company, that is the predecessor company, and still you refuse to us to put in here the records which are of a similar kind and similar character, and which are the records of the company itself.

The Master: I do not think they are similar.

Mr. Tobin: I do not know how you can draw any line, if the Master please, how we are going to attack, with the record, the facts which preceded the merger of this company with the Newtown & Flushing Gas Company.

Mr. Goetz: I have called up Mr. Addicks; Mr. Addicks can start out in ten minutes from 15th Street; he will be down here by 12 o'clock.

The Master: Have you any suggestions about the submission of this case, by oral argument or by proposed findings?

Mr. Ransom: I have proposed findings which I can send to your

Honor in the course of the day. I would like to look them over.

2363 The Master: There are some points I am puzzled about, and if I thought there would be any effort on the part of counsel to really discuss the matter and try to help me reach a conclusion rather than make speeches and call each other names, I think an oral argument might be of some use.

Now, there are some questions that I have disposed of it in my own mind and which I have announced as we went along. I fixed the land value as \$44,000 as already stated on the record.

Mr. Ransom: That is over our objection.

The Master: I know it is. I have ruled against the defendants on the question of candle power. I have rather definite views about the working capital item. I think I would prefer to hear some discussion of it before I reach a firm conclusion.

I am puzzled somewhat as to just what basis I can figure the cost of making and distributing gas, having in mind the 1919 figures as a basis, together with Woods' testimony. But I am puzzled because of the apparent increase in sales this year, and apparently a different result will be reached.

Now, I have got to guess at what the repairs and other items will be for the balance of the year, and I am a little bit puzzled about that. My recollection is that there is no dispute as to the estimated cost of the property now on hand.

Mr. Neumann: What does your Honor mean by that?

2364 The Master: I have not finished. Property on hand now that was on hand or has been on hand since 1904. In other words, that two hundred and some odd thousand dollar item that Hine assumed to be correct—

Mr. Neumann: Hine assumed to be correct, and the only point of difference between them was that Miller allowed no depreciation and Hine allowed depreciation.

The Master: Well, that is a matter of law that I am going to pass on.

Mr. Ransom: I find that Mr. Addicks if called would only corroborate the testimony of Mr. Spear as to the price.

The Master: 10¹/₄ plus.

Mr. Ransom: As to the coal situation, and I think I will not call him out of the conference.

The Master: I do not think we need that.

Mr. Cummings: We object to it, then.

The Master: I would like to have some light and get the views of counsel as to the going value item, as to the development item, that preliminary development expense. There seems to be an agreement.

Mr. Tobin: As to what?

The Master: That unless I can say that the New York & Queens bought the proposition as a going proposition, at a price, and can determine that price, then I have got to work back and get my estimated cost of the property on hand August 1, 1904, and still there, plus a going value, plus development expenses, and plus

property added since and subsequently withdrawn, to arrive at cost. Now, the reproduction cost, there apparently has been no issue made.

Mr. Ransom: Uncontradicted testimony.

2365 The Master: That seems to stand uncontradicted. Miller testified to the reproduction cost, and you have called no witness to contradict him.

Mr. Ransom: Reproduction cost now and the reproduction cost in 1914 is uncontradicted.

Mr. Tobin: That is not a fact.

The Master: Wait a minute. I am not asking for discussion now.

Mr. Neumann: These are only the Master's views.

The Master: Those are the things I have got to make my mind up about and dispose of.

Now, of course, I am not going to change the ruling I made in the Consolidated Gas case on depreciation. I think the evidence in this case confirmed what I said in my opinion in the Consolidated Gas case that this property is worth at least what it cost this company without depreciation from any angle.

If I am to make a finding as to reproduction cost, then I shall have to take Miller's testimony on reproduction cost, and there again, I have no necessity for decreasing this depreciation because I won't value the property on a reproduction cost. The most I will do there is simply say that the uncontradicted evidence shows the reproduction cost to be so much according to Miller's testimony.

I should imagine that if counsel really wanted to help me, a couple of hours' discussion might clear up some of these
2366 points in my mind, but if I am going to have spread-eagle speeches and quotations from the record and a lot of nonsense like that, that is a perfect waste of time and I will have to do the best I can. What do you think about it, Mr. Neumann; do you think that an oral presentation will be of any avail?

Mr. Neumann: If the Master thinks in view of the attitude that we have taken through this case that we are not going to assist the Master, I feel that I am not going to attempt to try and assist him, if that is his frame of mind. I have tried in this entire case to be helpful. I have tried to develop the facts, and I regret that the Master should have made any such statement, but having made it—

The Master: To be perfectly fair to Mr. Neumann, I want to confirm what he has just said with this limitation, and this only. That when it comes to asking counsel a direct question as to what you claim the testimony may prove or disprove, you do not meet me directly. You have co-operated in putting in the case. It has been a real pleasure to have you put in the case.

Mr. Neumann: That applies equally to counsel for the complainant, because there has never been a direct question that he has answered directly.

The Master: If I were to ask Judge Ransom what he claims is the generator coal, necessary to be used at this time, I know he will come back and say 37 pounds, and he will say, "I base that

2367 upon their actual results now." If I were the defendants I would be prepared to say, "Why, our contention is that it ought to be $32\frac{1}{2}$ or it ought to be 34 or it ought to be 30, and I base that contention upon this proof."

Now, when I asked you before, What do you claim should be the figure for generator coal, you started to make a speech.

Mr. Neumann: Quite the contrary. I said that the records of this company even in 1919 indicated 34. In the years prior it was less, running down as low as 31. Now, Woods in the Consolidated testified that $32\frac{1}{2}$ pounds of generator coal was sufficient.

The Master: You are doing the very thing I do not want done. For instance, I say to you, Mr. Neumann, what is your contention as to the amount of generator coal that ought to be figured in the cost of producing gas at this plant. Now, Mr. Neumann has been in this case for several months, and he has given it careful consideration, he knows his case, and he ought to be able to say to me without making a speech, "I contend that you must not allow more than 32 or $31\frac{1}{2}$ or 31 or $30\frac{1}{2}$," and then I can say, Mr. Neumann, what do you base that on? Then Mr. Neumann can come back and say, On this. But when I ask a question, How much oil do you claim—I will ask it now—How much oil do you say should reasonably be required for a thousand feet of gas in this plant?

Mr. Neumann: 4 gallons.

The Master: What do you base that on?

Mr. Neumann: I base that on the operations of this company on the prior years and I base it on Woods' testimony.

2368 The Master: He said 4.20.

Mr. Neumann: No; he said 4.1 or 4.2.

The Master: That is 4.20.

Mr. Neumann: And then we come back again to his own testimony in the Consolidated, where he said 4, and he also said right there that it did not make any difference with reference to the size of the plant.

Now, with reference to the coal, here is the situation: If you analyze the figures for the year 1919, and back of those years, you will find 1919 they used 34—1918 they used less. They run back as far as 31. Now, then, why isn't Mr. Woods' figure that he testified to in the Consolidated, $32\frac{1}{2}$, and which he stated would apply to a plant, whether it was one million, two million or ten million, an estimate of what is really correct?

The Master: What is the contention?

Mr. Neumann: I say based on that, 31 would be correct; based on that all the way back, the average over a number of years, whatever the figures would show.

Take, for instance, what it was over a period of years—

The Master: I think perhaps an afternoon's session or a morning's session may help me somewhat. If at that time I have before me the findings proposed by either side.

Mr. Ransom: Or have them in advance.

The Master: I would rather have them before me as part of the

discussion if I can have them. Can you have your findings ready by Thursday?

2369 Mr. Neumann: I doubt if I could, because in addition to this case as your Honor well knows I have been taking care of a number of other cases, and appearing before other courts with the result that I would not want to go into any discussion of the facts or make up any findings which would be helpful to the Master unless I had an opportunity to re-read the whole record.

The Master: How long will that take you?

Mr. Neumann: I should say I would be prepared a week from today to go on with the findings.

The Master: You could not do it Thursday?

Mr. Neumann: No.

The Master: I am not coming back to the City of New York a week from today.

Mr. Neumann: Is that a holiday? Make it Tuesday.

The Master: I am not coming back for this case at all.

Mr. Ransom: The Consolidated argument is on the 6th.

Mr. Tobin: I do not think it is possible to get the findings before you.

Mr. Ransom: The findings were to be submitted on the day of the close of the case.

Mr. Neumann: And you have not closed until today, and you were still open today to try and call another witness.

Mr. Ransom: The instructions were that the findings should be submitted on the day of the closing of the case.

Mr. Tobin: There is no such instruction.

2370 Mr. Neumann: Even up to the last minute you tried to introduce another witness. The case has been tried over a period of months. The evidence comprises if I recall correctly, pretty nearly 3,000 pages of printed typewritten minutes, and it is unfair to say the least to ask us to get ready in two or three days to orally argue it and submit findings in advance.

The Master: You ought to have the case as clearly in your mind as I have it in my mind.

Mr. Neumann: My mind may not operate as quickly as the Master's does. I am trying to comprehend this case as best I can.

Mr. Ransom: Of course, the complainant will be glad to do anything that your Honor may deem helpful with respect to oral argument or anything of the sort, supplementing findings. For my own part I doubt very much whether oral argument would get very far; I do not think it did in the Consolidated case.

Mr. Tobin: Well, representing the Attorney General, we want to be just as helpful as we can. All we ask is some time so as to properly put together the facts the Master desires.

The Master: Have you got an application for an injunction in this case?

Mr. Neumann: No. As a matter of fact, the fact is this: that in order for me to prepare anything that would be helpful for the Master I would have to go to the company's books, because there were

2371 a number of pages of the company's books that were introduced in evidence, and there was a discussion as to whether we were to be furnished with copies of them, and the result is that we have not been. I do not blame them at all, I am not censuring them, but I am simply showing that the time we are asking is not unreasonable under the circumstances.

The Master: I have got to submit a preliminary report in this case. I will tell you what I will do. You say you will have your proposed findings ready by Tuesday?

Mr. Neumann: How about you, Mr. Tobin; can you stay down here and work with me?

Mr. Tobin: Yes.

Mr. Neumann: So that we can both prepare them?

Mr. Tobin: Yes.

The Master: Will you send a messenger up to Warwick with them, it is only a couple of hours' run. He would have to stay overnight probably, he would only have to stay overnight. He could drive of course to Goshen probably and go down that way.

Mr. Neumann: Where would we get the expense from?

The Master: I do not know.

Mr. Neumann: We have not any money to spend for any such expense as that.

Mr. Ransom: If the defendants are willing I will furnish a messenger who will deliver them, if they are sealed, and they can be delivered in that condition.

The Master: What I had in mind was this: If I can get these findings any any memorandum, because I will take a memorandum instead of oral argument, Tuesday night, I will probably arrange to have a stenographer come up on Wednesday and then I could not get it out by Thursday, could I? I have got to be here on the 8th.

Mr. Ransom: You could hardly get it out that fast.

The Master: I will tell you what to do. The defendants will send all of their findings and any memorandum they want to submit to me to Judge Ransom on the 6th. You get them up to me on the 6th.

Mr. Ransom: That would mean that they would have to be in my hands at least by two o'clock.

The Master: They will have to be in your hands if your messenger wants to get the 2.15 train. Now, my address is: Red Swan Inn, Warwick, New York.

Now, there is a train that leaves Chambers street at 2.15, with a change at Greycourt; he can go to Greycourt, and then go southwest again to get back to Warwick. There is a train at 4.30.

Mr. Neumann: Isn't there a train from Goshen over?

The Master: There is no connection there at Goshen over or down—it is down from Goshen. You have got to take an automobile from Goshen there down; you can take an automobile from Greycourt up. They have a lot of trains on the Erie that stop at Greycourt but do not connect with the Lehigh & Hudson up to Warwick

or down to Warwick, and they have a lot of trains to Goshen, but there is no connection.

2373 Now, if I can have them there the night of the 6th, I will spend the 7th all day and try to dictate it while I am down here on the 8th, and just as fast as it is ready I will send the preliminary reports around and then they will be sent back to me to Warwick with any suggested changes. I will have a stenographer come up there and work it into shape and send them down for final discussion. I will try to get it out so that you will have it by the middle of July.

Mr. Ransom: You mean the final report.

The Master: Yes. That will give you to about the first week in August to move to confirm, and you can probably have it on for confirmation the second or third week in August. If anybody wants to communicate with me with reference to anything, just write me at the Red Swan Inn.